



# The Yukon Legislative Assembly

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Number 73

3rd Session

26th Legislature

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## **HANSARD**

**Monday, February 9, 1987 — 1:30 p.m.**

Speaker: The Honourable Sam Johnston

# Yukon Legislative Assembly

SPEAKER — Honourable Sam Johnston, MLA, Campbell

DEPUTY SPEAKER — Art Webster, MLA, Klondike

## CABINET MINISTERS

| NAME                | CONSTITUENCY            | PORTFOLIO   |
|---------------------|-------------------------|---|
| Hon. Tony Penikett  | Whitehorse West         | Government Leader. Minister responsible for: Executive Council Office; Finance; Economic Development; Mines and Small Business; Public Service Commission |
| Hon. Dave Porter    | Watson Lake             | Government House Leader. Minister responsible for: Tourism; Renewable Resources.  |
| Hon. Roger Kimmerly | Whitehorse South Centre | Minister responsible for: Justice; Government Services.   |
| Hon. Piers McDonald | Mayo                    | Minister responsible for: Education; Community and Transportation Services.   |
| Hon. Margaret Joe   | Whitehorse North Centre | Minister responsible for: Health and Human Resources; Women's Directorate.  |

## GOVERNMENT PRIVATE MEMBERS

### New Democratic Party

|              |          |
|--------------|----------|
| Sam Johnston | Campbell |
| Norma Kassl  | Old Crow |
| Art Webster  | Klondike |

## OPPOSITION MEMBERS

### Progressive Conservative

|                |  |
|----------------|--|
| Willard Phelps | Leader of the Official Opposition<br>Hootalinqua |
| Bill Brewster  | Kluane   |
| Bea Firth      | Whitehorse Riverdale South                       |
| Dan Lang       | Whitehorse Porter Creek East                     |
| Alan Nordling  | Whitehorse Porter Creek West                     |
| Doug Phillips  | Whitehorse Riverdale North                       |

### Liberal

James McLachlan Faro

## LEGISLATIVE STAFF

|                                  |                    |
|----------------------------------|--------------------|
| Clerk of the Assembly            | Patrick L. Michael |
| Clerk Assistant (Legislative)    | Missy Follwell     |
| Clerk Assistant (Administrative) | Jane Steele        |
| Sergeant-at-Arms                 | G.I. Cameron       |
| Deputy Sergeant-at-Arms          | Frank Ursich       |
| Hansard Administrator            | Dave Robertson     |

<sup>01</sup> **Whitehorse, Yukon**  
**Monday, February 9, 1987 — 1:30 p.m.**

**Speaker:** I will now call the House to order.  
 We will proceed at this time with Prayers.

*Prayers*

#### DAILY ROUTINE

**Speaker:** We will proceed at this time with the Order Paper.  
 Are there any Introduction of Visitors?  
 Are there any Returns or Documents for Tabling?

#### TABLING RETURNS AND DOCUMENTS

**Hon. Mr. Penikett:** I have for tabling documents that contain information concerning the transfer of NCPC's assets to the Yukon government.

<sup>02</sup> **Speaker:** Are there any Reports of Committees?  
 Are there any Petitions?  
 Introduction of Bills?  
 Notices of Motion for the Production of Papers?  
 Notices of Motion?  
 Statements by Ministers?  
 This then brings us to the Question Period. Are there any questions?

#### QUESTION PERIOD

##### Question re: Land claims, overlap policy

**Mr. Phelps:** I have a question of Government leader concerning the statement of claim filed by the Kaska Dena, back in December, wherein they claim every aboriginal title over some ten thousand square kilometers around Watson Lake in the Yukon Territory.

Could the Government Leader tell us whether or not the Government is going to intervene in that case?

**Hon. Mr. Penikett:** As I indicated on previous occasions when the question was put to me, our Cabinet has considered that matter, and I will be in a position to make a statement to the House on that question this week.

<sup>03</sup> **Mr. Phelps:** Can the Government Leader advise whether this government has engaged any lawyers outside the government with expertise in this sort of case to review and analyze the case on their behalf?

**Hon. Mr. Penikett:** We are examining our options in that regard and considering the wisdom of various alternatives.

**Mr. Phelps:** I take it the answer is they have not. Could the Government Leader advise whether this government has had any discussions with the federal Department of Justice regarding the general strategy governments are going to employ in this case?

**Hon. Mr. Penikett:** I cannot say with confidence that our government has had discussions with the federal Department of Justice. Our officials have had discussions with representatives of the Department of Indian and Northern Affairs. It is possible that my colleague, the Minister of Justice, has had his officials begin some discussions with the Department of Justice, but I cannot vouch for that.

##### Question re: Land claims, overlap policy

**Mr. Phelps:** My next question has to do with overlapping claims into other parts of the Yukon by outside groups. We know there are numerous of those kinds of claims confronting Yukon. My question to the Government Leader is whether or not the Government of the Yukon is maintaining the position that no land will be granted to outside claimants.

<sup>04</sup> **Hon. Mr. Penikett:** I believe I have answered that question on previous occasions. We will be attempting to resolve the questions that are on the table as a result of discussions with these parties. Again, in this respect, I would hope to have something to advise the

House later this week, but the principal avenue for addressing the overlap question has to be with a policy statement coming from the federal government. The Minister, when he was here last week, indicated that he would not be ready with the Yukon specific policy for another two months, I believe he indicated.

##### Question re: Land claims, overlap policy

**Mr. Phelps:** I understand that officials from this government either have been meeting or are about to meet with the negotiator and officials from the Dene group of the Northwest Territories. Can the Government Leader confirm this and advise whether or not that meeting is, in part, to discuss a process for granting land in the Yukon to those groups?

**Hon. Mr. Penikett:** We have been meeting with other overlap groups, principally the Dene Metis from the Northwest Territories in an effort to deal with their claims. As I previously advised the House, we will be attempting to help, if we can, develop a common position among the overlap groups in those that have claims in the Yukon Territory. We will be attempting to deal with them in a matter that: (1) expedites the Yukon claim; and (2) allow us to proceed with developing our territory as people here wish.

The principal vehicle we need for resolving these matters is a new policy from the federal government.

<sup>05</sup> **Mr. Phelps:** The hunting agreement, trapping agreement, the fishing agreement, and the selection of land, all of those agreements in the past claim were signed on the strict basis that any share of the harvest or any land granted to outside groups would come from the Yukon Indian share. Is the Government Leader going to stand there and tell us that he is prepared to break those agreements and grant additional rights not contemplated to outside groups without reducing the land and the harvesting rights in the Yukon?

**Hon. Mr. Penikett:** That is not what I am saying to Members, nor does the question make much sense. As the Member opposite well knows, his proposition for reaching agreement on these things was rejected by the aboriginal parties to the agreements. It has also been, I understand, rejected as a basis for a settlement by some of the non-resident aboriginal groups, which does not make it a very helpful proposition for solving the problem.

##### Question re: Yukon Electrical, rate application increase

**Mr. McLachlan:** I have a question for the Minister of Government Services. On November 24, the Minister arose in this Legislature to deliver a Ministerial Statement with regard to the Yukon Electrical Company Limited rate application increases. At that time, the Minister announced that he had ordered the Board to cancel Yukon Electrical's rate application until such time as the transfer of NCPC had been completed to this government. As a result of the transfer on Thursday, is it now the Minister's intention to proceed with a continuation of Yukon Electrical's rate application increase?

**Hon. Mr. Kimmerly:** The answer is a qualified yes. The statement I made on November 24 had two prerequisites for the resumption of the rate application. One was the transfer of NCPC to Yukon, and the other was a consideration of policy as a policy direction to be given by regulation to the Yukon Utilities Board. That policy analysis and development is ongoing and is connected with the transfer. I am expecting that that review will be completed in a month or so.

<sup>06</sup> **Mr. McLachlan:** I assume from the Minister's answer that we cannot expect the resumption of hearings into the rate application for at least a month, but I am wondering if the Minister or the Government Leader can then further explain the statement made in this Legislature about a freeze in power rates with regard to NCPC. In light of the Minister's answer that he does intend to proceed with the hearings into the rate increases, what then is meant by the expression "a freeze in power rates"?

**Hon. Mr. Penikett:** Let me be perfectly clear about this. I will explain it as I did last week. What is involved is a transfer of NCPC's assets from the federal Crown to the Yukon government. That arrangement provides for a situation where NCPC can say its base rate power increase will not go up for two years. Most of the power generated by NCPC is sold to Yukon Electrical for resale.

Obviously there is nothing in the agreement between the federal government and the Yukon government allowing NCPC, for example, to control the situation whereby Yukon Electrical is generating diesel and selling it directly to its consumers. The base rate of power from NCPC to Yukon Electrical, or from the new company to Yukon Electrical will not go up. The Member should understand that now we have concluded an agreement about the transfer, there will be many discussions between the Development Corporation and Yukon Electrical about the matter of rates. There will have to be applications before the Yukon Public Utilities Board, which gives us the power to control these matters.

The question of any costs which Yukon Electrical has, which it claims in increased rates, it will obviously have to appear before, and justify before, public hearings.

**Mr. McLachlan:** The statements by the Government Leader about the freeze in NCPC rates leads me to believe what will be frozen is the rate at which the power is generated and fed into YECL's hydro-generation system to the territory. That then leaves Yukon Electrical paying lip service or fulfilling part of the agreement by being able to freeze the rate at which the power is generated to them. In fact, they are quite likely to be able to raise the rates anywhere else in the territory. Is this not what the Government Leader is saying?

**Hon. Mr. Penikett:** Yukon Electrical, or any other electric power company, in order to get a rate increase, is going to have to go before the Public Utilities Board and justify that rate increase on the grounds of increased cost. The most significant cost for them is the price of power, and the price of power, we are saying, is not going to go up. If they are going to have to go before a Board and justify an application for rate increases based on their costs, we cannot, of course, speak to, or control, the question of costs, where in fact Yukon Electric is selling diesel power, which it generates itself, to its own customers. We are saying that we have the ability now to freeze the base rate for two years, and that is what will be done.

#### Question re: Skagway-Fraser highway

**Mr. Lang:** I would like to move to another issue and address a question to the Minister of Community and Transportation. It has to do with the Klondike Highway between Carcross and Fraser. A number of times I have raised the question of making a sanding truck available to Fraser Camp to be able to adequately maintain that section of the road. On Friday, I believe, we had an accident on that particular portion of road, and I would like verification from the Minister: is it true that that accident took place on the unsanded portion of the highway?

**Hon. Mr. McDonald:** We are looking at the circumstances surrounding this particular accident to determine what may have contributed to it. I have no way of knowing, at this time, whether the road was sanded or what the specific circumstances are. When I know, I can report to the House easily enough.

**Mr. Lang:** We are talking about approximately four days ago when this particular accident took place. Just to inform the Minister, I have been informed that the sanding truck went as far as Venus and the accident took place on the other portion of Tutshi Lake and it was the unsanded portion of the road that could have caused, at least in part, that accident.

I want to ask the Minister, seriously: would he be prepared to reconsider his decision not to provide a sanding truck for the Fraser Camp but to provide a truck for that particular camp in view of the conditions that that particular maintenance camp experiences on an hourly basis, not on a daily basis.

**Hon. Mr. McDonald:** The Member makes the assumption, firstly, from his information that the trucks were travelling on an unsanded road. Secondly, he makes the assumption that the fact that not only was the road unsanded but that the unsanded road was a contributing factor to the accident, neither of which are proven to my satisfaction.

I would like to have the opportunity to have the department investigate the situation as the intervening few days have been over a weekend and have them report back to me as to whether or not it was a contributing factor. As I have told the Member already once,

the policy of the government is to ensure that the highways are safe. If they need to be sanded, they will be sanded.

**Mr. Lang:** That is what he said last week: that if they needed to be sanded they would be sanded. I am here to tell the Minister that that portion of the road was not sanded. I am informed by a number of truckers who travel through that particular area, so I am asking the Minister again: in view of the fact that the sanding truck generally only goes as far as Venus and you have a number of intervening miles that should be sanded on an ongoing basis, would the government be prepared to relocate, or purchase, a sanding truck to help that maintenance camp do the job that they are being asked to do?

**Hon. Mr. McDonald:** If a decision is made to have a sanding truck at Fraser camp, a sanding truck would then be provided, but there again I say the Member made some assumptions that are basically allegations, but they are not proven. I will have the department investigate the matter. They already are investigating the matter to determine the contributing factors to the accident. Once the contributing factors are determined, we will do whatever is in our power to prevent the occurrence from happening again.

#### Question re: Surplus furnishings

**Mrs. Firth:** My question is to the Minister of Education. I would like to know if the Minister can tell if it is still a policy of his department that when furnishings such as chairs and desks and so on are declared surplus goods that they are put up for public auctions through the Department of Government Services?

**Hon. Mr. McDonald:** My understanding is that all government items are disposed of through Government Services, either through government auctions or through whatever means are normally provided through that department.

**Mrs. Firth:** Can the Minister explain why a truckload of surplus chairs from the Porter Creek Secondary School was taken to the city dump the week before last, and instruction given to the employee to destroy the chairs with a sledgehammer?

**Hon. Mr. McDonald:** No I cannot. I do not know anything about the matter the Member brings to our attention, but I will certainly have it investigated and will report back to the House.

**Mrs. Firth:** Perhaps the Minister could tell us whether or not the disposition of the surplus goods went through the proper channels within the Government for the disposition of such goods.

**Hon. Mr. McDonald:** It is standard policy to dispose of the goods in the traditional way. The traditional way is to have them surplus through Government services. They could be surplus either by having them thrown out of being beyond economical repair, or they can be auctioned. That is the standard policy, and if this matter the Member brings to my attention deviates from that policy, I will find out why.

#### Question re: Surplus school furnishings

**Mrs. Firth:** My new question is regarding the same matter. They were declared surplus. The Minister should be aware of it. I believe they go through a Board of Survey and a Deputy Minister approval process, and I would submit that the Minister is somewhat lacking in knowledge about what is going on in his department. Is the Minister telling us that he had absolutely no knowledge, through the Board of Survey, Management Board meetings, or whatever he is suppose to attend as a Minister, of this incident?

**Hon. Mr. McDonald:** The charge the Member is making is absolutely unreasonable, in my view. There are hundreds of items that are disposed of through Government Services and the Board of Survey. There are all kinds of minute details that are being undertaken by department officials and by school staff on an ongoing basis and on a daily basis. I think it would be unreasonable to expect that the Minister should be aware of every detail. I certainly am responsible for the establishment of policy and ensuring that the department adheres to the policy, and if there is a particular instance where the Member or anyone in the public feels that the department is not adhering to the established policy, then I will certainly undertake to investigate it, as is my responsibility.

**Mrs. Firth:** I would like to have the Page deliver some photographs of some chairs at the Municipal Dump to the Minister.

I think it indicates how strongly the public does feel about this issue, particularly about the way surplus goods have been disposed of. I gather from the Minister that we have a full commitment that there will be an investigation launched into the activity of the chairs being disposed of by the employee being given instruction to destroy them with a sledgehammer?

**Hon. Mr. McDonald:** There will be a very thorough investigation into the Member's allegation. I will report to the House as soon as I have a response.

**Question re: Furniture manufacturing**

**Mr. Nordling:** I have a question to the Minister of Economic Development with respect to the Yukon-based Furniture Manufacturing Study.

In assisting with the preparation of the study by HLA Consultants of Edmonton, did the government make any commitment to buy locally-manufactured furniture in light of the fact that furniture manufacturing is not viable without considerable government purchases?

**Hon. Mr. Penikett:** Perhaps it was before the Member got to the House, but we had made a policy decision to where we deemed it to be economic to purchase locally-manufactured furniture of a certain kind, very early on. I believe the consultant's study was done because certain Members opposite felt we should be importing stuff from outside rather than putting Yukoners to work making this kind of product.

**Mr. Nordling:** Was there any commitment to accept the recommendation that the government would have to modify its furniture specifications to give local furniture manufacturers equal opportunity in competing with office furniture suppliers?

**Hon. Mr. Penikett:** I am not sure I know what the Member is getting at. As we previously told the House, there are certain kinds of furniture which, at this time, we did not think it was wise for us to purchase. I believe school furniture is of a kind where there are long factory runs, and therefore there are economies of scale that would not make the locally-manufactured product price competitive at this point.

The executive furniture, which is the principal kind we have been purchasing, we think is an extremely attractive product, manufactured locally, and at a competitive price.

**Mr. Nordling:** There was also a feasibility study done on the viability of a glue-laminated manufacturing plant in the Yukon. According to that report, and the Minister's Ministerial Statement, there would have to be a pre-purchase commitment to make that plant feasible. Has the Government made any policy or decision with respect to a pre-purchase commitment for glue-laminated products?

**Hon. Mr. Penikett:** The Member is quite correct in his statement of the conclusion, but, at this point, we have not made any such commitment because, as far as I know, there is no one yet established with whom we could even discuss that possibility.

**Question re: Furniture manufacturing**

**Mr. Nordling:** On February 3, the Minister made a Ministerial Statement with respect to import substitution. The statement spoke briefly about a workshop held and then went on to discuss the two reports that I have mentioned, furniture manufacturing and glue-laminated manufacturing. My understanding is that a Ministerial Statement is a short factual statement of government policy; therefore, I would ask if it is the government policy to accept these studies and to implement the conditions precedent to make import substitution in these two areas viable.

**Hon. Mr. Penikett:** I do not know if the Member is trying to split hairs. Forgive me for being legalistic, but I think we accept both of the reports from people who were commissioned to do them. Whether we have adopted the study, in other words, adopted every one of the particular recommendations, I believe we can say we have not because we have not had occasion to do. As a general proposition, let me reiterate, in this area of import substitution with an opportunity here to achieve considerable added value and benefits in employment and business opportunities in our economy, yes, we are very interested in pursuing these possibilities.

**Mr. Nordling:** I understand that the government is interested in pursuing them. My question is because there is such a large commitment by government to make these two ventures successful. My question is, has the government developed a policy with respect to implementing these? A Ministerial Statement is a short statement of government policy. Is that what the Ministerial Statement was to mean?

**Hon. Mr. Penikett:** I am afraid the Member is being picky. A Ministerial Statement may well be a statement of factual report on events, such as a conference and so forth. We have indicated our policy quite clearly. We are interested in advancing opportunities for import substitution, because we think that is an important way for Yukoners to be able to develop and diversify our economy.

In every case, the private sector will have to take some initiative in these areas. If there is someone in the private sector who sets up the glue-laminated proposition and is prepared to make the necessary investment and commit their resources to developing such a plant here, then, yes, we would be willing to discuss and explore with them the kinds of arrangements that would help make it viable. We are a large purchaser of such materials. We are a large purchaser of just about everything in the Yukon Territory. It would be, of course, naturally our responsibility to do whatever we can as a large purchaser to help facilitate and promote the development of Yukon jobs and Yukon businesses.

**Mr. Nordling:** Will it then be the government's policy to use a value added approach to justify the difference in price between locally manufactured furniture and imported furniture?

**Hon. Mr. Penikett:** I do not know whether the specific value added suggestion by the Member with respect to furnishings is warranted or even necessary. We did indicate to the House the other day that we will be considering the value added report, I believe, tabled by my colleague, the Minister of Government Services, with respect to large contracts. I believe, in that case, the report recommended contracts of over \$100,000, and we will definitely be considering the value added recommendations contained in that report.

**Question re: Diversion Committees**

**Mr. Phillips:** I have a question for the Minister of Health and Human Resources. On February 3, I asked the Minister a question regarding the status of the Diversion Committees in Whitehorse. The Minister told us that she would find out why this Committee is not operating. Could she report to the House now on why that Committee is not operating?

**Hon. Mrs. Joe:** I received a letter from the Diversion Committee just last week, and they have informed me that the Chairman, who was elected at that time, had resigned, I believe, and that things had gone downhill from there. The Committee itself is a volunteer committee, and we are looking at the possibility of reactivating it.

**Mr. Phillips:** Is the Minister telling this House that the Diversion Committee, which is a very high priority of the Minister, has not been functioning for over a year-and-a-half and the Minister did not even enquire why?

**Hon. Mrs. Joe:** I was aware that the Committee was not in operation, and I have talked to some members of it. It is up to me to support such a Committee; however, it is a volunteer committee and it was set up by those individuals who were interested in starting one. I would think that it was not up to me to go out and tell those people to become active again. It is a priority of mine, and we will be meeting with individuals who would be interested in reactivating that Committee.

**Mr. Phillips:** It is a priority of the Minister's, but for almost two years the Minister has done absolutely nothing about it. Would the Minister table any letters or documents that she has sent to the Diversion Committee in the last year-and-a-half asking the Committee why they have been inactive?

**Hon. Mrs. Joe:** I do have some letters on file. The information that I have is mostly verbal. I am not sure whether or not it would be of any great interest to table any letters, but I will check that out and find out whether or not it is something that I can do.

**Question re: Haines Junction, Willow Acres**

**Mr. Brewster:** My question is to the Minister of Community Affairs and Transportation Services. I am in receipt of a copy of a letter sent to the Minister by the Village of Haines Junction regarding Willow Acres in Haines Junction. Can the Minister advise the House if the government is prepared to release these lots at a fixed price in view of the fact that by the time the sewage disposal testing is completing the sale price for this land may be well above market value, and the land may also be unavailable for another year.

**Hon. Mr. McDonald:** Certainly the government will attempt to release the property as soon as possible. We would like to get the village's agreement on the release time and the terms under which the land will be released. I do not have an update on this day as to what the status of that property is, but I will check on it and indicate to the Member that as far as we are concerned right now, that as soon as the land can be released, it will be.

**Mr. Brewster:** Is the government prepared to accept a no-interest, five year purchase agreement as proposed by the Village Council in order to aid consumers with the purchase of these lots?

**Hon. Mr. McDonald:** Firstly, I will have to say that we do not have special sale policies for individual subdivisions. There is either a policy to sell land that is applicable around the territory, or there is not.

I have not had time to consider the suggestion made by the Village Council, but I certainly will.

**Mr. Brewster:** Is the government prepared to consider releasing these lots on an "as is" basis, and then continue working with the purchase and Environmental Health to develop acceptable sewage disposal system, much like the arrangement made by the Champagne-Aishihik Band, which has worked out this agreement with Environmental Health?

**Hon. Mr. McDonald:** We did, I believe in 1985, attempt to sell the lots on a "buyer beware" basis and had very detailed publication presented to any buyer who might wish to buy any particular lots indicating what all substantial weaknesses of each lot happened to be. At that time the Village of Haines Junction expressed strong objection to us proceeding without some further work being done on alternative sewage disposal systems. That is what we have undertaken to do, so if the Member is suggesting we should go back to the original plan, I do not think it is workable because we have tried it once, unsuccessfully.

**Question re: Haines Junction, Willow Acres**

**Mr. Brewster:** I wonder if the Minister would consider looking into the same system that the Champagne-Aishihik Band has used to put sewage and water in the same lots adjacent to the Willowdale Acres?

**Hon. Mr. McDonald:** We certainly will. I would be very surprised if Municipal Engineering was not aware of what was happening next door to Willow Acres. I am sure they will already have assessed the matter. If the other sewage disposal systems prove positive, I am sure it can be used in Willow Acres as well.

**Mr. Brewster:** The people in Haines Junction have virtually no other acceptable options available for residential land development. I would like to know when the Minister is going to proceed with this, if not right away?

**Hon. Mr. McDonald:** I already indicated to the Member we would proceed as soon as we possibly could. There is an orderly development of land policy that tries to ensure that Municipal Councils are in full agreement with the approach we are trying to take, and we have been trying to satisfy their concerns when the land is within their municipal boundaries. We have been trying to satisfy their concerns over the last year or so, and when we come to some amicable agreement, I am sure we will get the land released immediately.

**Question re: NCP-Curragh Resources power rates**

**Mr. McLachlan:** I have a question for the Government Leader.

In October of 1985 a long-term purchase agreement was signed between NCP-C and Curragh Resources for the provision of power at a favourable rate to add stability to that operation. Can the

Government Leader assure that Corporation today that no wishes of Yukon Electrical, or order of the Yukon Utilities Board, will take precedent over that agreement, at least until such time as it is expired?

**Hon. Mr. Penikett:** Consistent with agreements that were made in the master agreement with the operators at Curragh, and consistent with the agreement made between us and Canada, the Curragh rates will be frozen for two years, effectively. I believe that that is actually consistent with the original agreement with Curragh. There is a long-term agreement between NCP-C and that company that we will inherit as we inherit the assets of that company.

**Mr. McLachlan:** On March 31, the Department of Indian Affairs and Northern Development will cease its subsidy program. I am unclear, as a result of the announcements on Thursday, if it is the intention of the Government of Yukon, or Yukon Electrical, to continue the subsidy program to Yukon consumers for domestic power. Can the Minister elaborate?

**Hon. Mr. Penikett:** Yes. The \$19.5 million, which the federal government made as an equity grant for us, in lieu of the subsidy money, allows us to continue the subsidies as they were — perhaps not paid in exactly the same way, but it allows us to continue them as they were. However, as I also made clear, in answers put to me by the Leader of the Official Opposition, on Thursday, we are now in the position, should we wish — we being the government, Development Corporation, Yukon Electrical and the Electrical Public Utilities Board, because all of these things will have to be subject to discussion by them — to restructure those subsidies, should we wish, to provide a different range or different types of benefits for the people for whom they were intended, namely the people who are consuming diesel power in rural Yukon.

**Mr. McLachlan:** A further question to with regard to the employees of NCP-C. The media package handed out refers to job security for all Yukon-based employees, in at least two places. In a further place it refers to the fact that only those Yukon-based employees who will have 6 months seniority at March 31, 1987 will retain their jobs. Does that mean that anybody who started after October 1st will now be able to kiss his or her job good-bye, or does it in fact mean that all employees, as the media package states, will be transferred to Yukon Electrical without a probationary period or without loss of seniority?

**Hon. Mr. Kimmerly:** The explanation of that provision is simply to maintain the probationary periods, which are now in existence. No one will lose their job, but they will not have their probationary period cut short and automatically be guaranteed a job. That provision is simply to maintain the existing probationary periods.

**Question re: NCP-C employee transfer**

**Mr. Lang:** I want to pursue this further as far as the jobs and the employees with respect to the transfer is concerned. I would like to make it clear on the record exactly what is going to happen with the people involved.

Is it the position of the government that any employee — permanent, casual, or probationary period — will be granted a job with Yukon Electrical with the transfer, if they are working with NCP-C as of February 1?

**Hon. Mr. Kimmerly:** The transfer date is April 1 not February 1. I am not sure if anything significant hinges on that, but the crux of the answer is: no one will lose employment.

**Mr. Lang:** I am very pleased to hear that. I would like to pursue this further. Have any instructions been given to NCP-C to ensure that transfers from the Northwest Territories for the purpose of employment in Yukon will not be made if they would replace any Yukon employed people?

**Hon. Mr. Penikett:** Let me just be perfectly clear about what our agreement says. Our agreement talks about all permanent NCP-C employees; therefore — and I want to be clear and not have the Member come back to us and say that we are misleading the House — if there is a casual who has been on for two weeks, or a certain period of time, they are not covered, because as casuals they are obviously not permanent employees. Obviously, if they are doing

work that the Corporation needs, then they have good job prospects.

With respect to the case — and I happened to hear of one the other day — where, as long as NCPC is operating the company, as they will be until the end of the fiscal year, there may be corporate transfers going on between the Yukon and the Northwest Territories on the basis of bumping and seniority and those kinds of things, which may be provided for under their collective agreement. We have not, I believe, spoken specifically to that kind of situation in our agreements, because that would be the kind of detail, I think, that would be beyond us. I do, of course, recognize the potential problem and would like to take the question under advisement and come back to the Member. I know about one case; he may know about another case. If he does, I would be pleased to have the individual information so that I can investigate it.

**Mr. Lang:** I recognize the difference between casual probationary and staff. In respect to the internal transfers with NCPC federal corporation and the proposed lay-offs primarily in Pine Point, there is some thought of moving some of these employees into Yukon, effectively, people who are casual and on the verge of perhaps becoming permanent employees. I want to ask that the government take the proper steps to investigate and also instruct NCPC that if people are working here on a casual or whatever other basis that they will be given priority.

**Hon. Mr. Penikett:** Obviously, our purpose was to protect the interests of Yukon-based employees. It is an interesting question; I do not know what the legalities would be of an employee transferred from Hay River to the Yukon Territory last month, whether that would constitute a Yukon-based employee. They, clearly, have six months seniority if they were transferred. So I think we do have to ask ourselves that question and come up with an answer, because I understand it could be a complicating factor. I will undertake to have that looked at.

**Speaker:** The time for Question Period has now lapsed. We will now proceed with Orders of the Day.

## ORDERS OF THE DAY

**Hon. Mr. Porter:** I move that the Speaker do now leave the Chair and the House resolve into Committee of the Whole.

**Speaker:** It has been moved by the hon. Government House Leader that the Speaker do now leave the Chair and the House resolve into Committee of the Whole.

*Motion agreed to*

## COMMITTEE OF THE WHOLE

**Chairman:** The Committee of the Whole will now come to order. We will now recess for 15 minutes.

*Recess*

**Chairman:** Committee of the Whole will come to order.

### Bill No. 99 — Human Rights Act — continued

**Mr. Lang:** As you know, we are going to be going fairly shortly into clause-by-clause debate of the Bill before us. It is of historic significance that I have here to file with the Clerk 2,432 names of Yukon residents who signed a petition registering their concerns about certain principles enunciated in the legislation put forward by the Minister of Government Services. I want to file this with the Clerk because I think it is important and significant that this number of people of the Yukon, who are obviously concerned about the legislation, would sign this petition.

The petition reads as follows: "To the Yukon Legislative Assembly. This Petition of the undersigned shows that Yukoners are opposed to certain principles contained in Bill No. 99, the NDP's proposed Human Rights Legislation. These offensive principles include:

- 1) Sexual orientation;
- 2) Equal pay for work of equal value;

3) The creation of a pro-active Human Rights Commission with broad investigative powers;

4) Criminal charges or criminal record;

Therefore, the undersigned ask the Yukon Legislative Assembly to withdraw Bill No. 99.

Dated the 3rd day of December, 1986."

There is a group of individuals who express very serious reservations with respect to the fundamental principles in the legislation we are about to go into clause-by-clause debate on. The reasons are very, very legitimate, in the judgment of this side. Some of them are moral, some from a legal point-of-view, and others from the point of view of the overpowering presence of government and the ability of government to intrude on an individual, individuals or organizations, when the whim strikes them, under the guise of justice.

I submit to you that that is what separates, ideologically and also practically, the two philosophies espoused in this House, the side opposite and this side, with respect to how we envisage life in Yukon and the freedom of the individual as opposed to the power of the state.

There are very, very basic principles included in the legislation and I expect to see not only the front bench speaking on the Bill as we go through the principles, but I would like to see the Members of the government side speaking as well in respect to the principles that we are going to be passing into law.

These are not policy statements any longer, these are laws that we are dealing with — the laws of the land and the power of the court, when push comes to shove in respect to the citizens we represent. I want to say, on the record, that I think it is safe to say that Mr. Kimmerly, for all good intents and purposes, will have won the day. His philosophy and his ideology of the Bill, which was presented to us approximately a year and a half ago is enunciated almost word for word, principle by principle, in the legislation that we are going to be dealing with over the course of the days to come.

I just want to say this, to this Minister and to him as a private citizen, I hope that he has intentions of living in the Yukon for a long time to come. I hope he is not just a fairweather friend who is here to pass the legislation and to move elsewhere so he can live under someone else's laws, because these laws are not just for him, they are for everybody. It is going to be years and years, in the years to come, when we will see the effect of this legislation. We can all stand here and talk about the significance of the FILE ERROR. The most controversial issue is the protection in this law of discrimination on the basis of sexual orientation. Many people do not separate their approval or disapproval of homosexuality from assuring those people, who may be homosexual, their basic civil rights. The government does make that distinction. I am convinced that the majority of the Yukon population makes that distinction.

In any event, this is obviously a signal that we are about to leave general debate and go into clause by clause discussion. I am very thankful for that, and I am sure that the debate will be meaningful in clause by clause. Let me assure, as the sponsoring Minister, all Members that every single proposed amendment, all of the reasonable or reasoned amendments, will be considered and debated to their fullest. I look forward to that occurring in the very near future.

**Mr. McLachlan:** I would like the Minister to explain something a little further. In regard to the part about assembly for any purposes, and the specific item this relates to is number five, I understand the right to peaceable assembly for any character. It is the last three words of the clause that I am concerned about. It means exactly that: for any reason, lawful, unlawful, illegal, however far right or far left of the law one may presume that that could take one. I am wondering why the Minister would not include something, in a general type of clause like that, that would be more specifically related to right of peaceable assembly for any legal purpose. Does that include, for example, right of peaceable assembly here in Yukon for the Communist Party or the Klu Klux Klan.

For example, there was a time when the FLQ was presumed to be an association for peaceable assembly. Events in history have led us

to believe that is different. I am wondering why that particular situation would not be tightened up or made more specific. In fact, it relates to any right of assembly for peaceful purposes, not for illegal purposes. I see that being a problem area in future in Yukon, and one that is subject to a wide degree of interpretation.

**Hon. Mr. Kimmerly:** This is obviously a question about a specific clause, but I will respond this way, generally. The moment that you impose a restriction, you get into trouble. What we think of as a free country involves the rights of free speech and freedom of peaceable assembly. Now, the word "peaceable" there is a restriction in itself, in that if there is an assembly that is disruptive — and one can think of simple situations of a group that congregates in the middle of the street and disrupts traffic — then there is an interest about the general peace in the community.

There are laws in the *Criminal Code* about conspiracy and about treason and about advocating the violent overthrow of the government. Those laws would continue to exist, of course, and would not be affected by these laws or this proposal. It is important to draw the distinction between the right to assemble, the right to get together, and what one does after the assembly occurs. If one is involved in a conspiracy for criminal purposes, then that is covered by the *Criminal Code*. It is not the act of getting together that is illegal, or wrong, or contrary to public policy, it is the criminal purpose that is the problem.

It is generally conceded that in a free, democratic country, the government has no right to say you may assemble for one purpose, but you may not assemble for some other purpose. The problem is: who decides what is an acceptable purpose? The only restrictions that I am aware of are in the *Criminal Code*, and they involve treason and criminal conspiracies, and the like. If people wish to get together and discuss a political philosophy, no matter what the philosophy is, they have a right to do so.

**Mr. McLachlan:** My concern is, whether there are three people gathering in one livingroom for coffee and discussing the objectives of the Marxist/Leninist Party of Canada, or whether there are thirty thousand people gathering in a football field for a political rally, it starts peaceably but it does not often end peaceably. At what point do you draw that fine line? I would agree with the Minister that it is the *Criminal Code of Canada* that regulates provincial governments by whatever means, but I just saw the introduction of a particular relevant clause, like Clause 5, into Yukon, something that has never been dealt with before, and I can see circumstances where it would cause problems with interpretation. This is an issue that has never been dealt with before.

**Hon. Mr. Kimmerly:** The point at which we should be concerned is when a criminal act occurs, and not before that point.

**Chairman:** Does this conclude general debate on Bill No. 99? According to our Standing Order No. 58(1), we will dispense with debate on the preamble until all the clauses have been dealt with. I would just like to remind all Members, before we begin with clause by clause debate, of Standing Order 42(2), which states: "Speeches in Committee of the Whole must be strictly relevant to the item or clause under consideration."

#### On Clause 1

**Mr. Phelps:** I raise the concern of many Yukoners on Clause 1(b), the objects of this Act are "to discourage and eliminate discrimination", and in 1(2), "This Act does not affect rights pertaining to aboriginal peoples established by the *Constitution* of Canada or by a land claims agreement."

Can the Minister tell us exactly how those two relate. Is it intended that aboriginal people have more rights than others?

**Hon. Mr. Kimmerly:** Aboriginal right is a right that is protected now in the Canadian *Constitution*, so any law that does not recognize existing aboriginal right would be struck down as being unconstitutional, in any event. The concern, of course, or the more practical concern, is: what are aboriginal rights; how do we define them? It is, of course, impossible to simply pass a Bill in this house that serves to define average rights. The land claims process, which is a well known to all Members is designed as a process that will define what aboriginal rights will exist in a practical essence here in the Yukon Territory. It is not the intention of this Government to, in any way, influence those discussions, or the

concept of aboriginal rights by this Act. What this Act does is recognize that there is an aboriginal right that is guaranteed, of course, in the Canadian *Constitution*. That is essentially the meaning of clause 2, and a reason why 1(b) and section 2 exist.

On a practical level, there are those in society who would claim that aboriginal rights of a particular kind are not discrimination. There are others who claim that they are a discrimination on the basis of race. That debate is unresolved. It is unresolved here, and it is unresolved in the minds of many Yukoners. It is something that the land claims negotiation will serve to define.

**Mr. Phelps:** Most Yukoners believe in equality of people, and equality of all residents within Yukon. That is the way I was reading the objects under 1(1). Discouraging and eliminating discrimination is something that is very important; that every individual is free and equal in dignity and rights is extremely important. There is certainly an apparent contradiction with (2).

My concern is that everyone knows that the *Constitution* of Canada will override any of the laws passed in Yukon by this Legislative Assembly. I am very concerned when I see this Act pretending it is doing something that is entirely unnecessary under the laws of the land. It seems to me that Section 1(2) is unnecessary because of the law, unless there is something meant by the phrase "by a land claims agreement" that is broader than the land claim that is entrenched in the *Constitution*.

I am very concerned that this legislation starts off on an unnecessary and wrong footing. Namely, it states in the first clause of the Bill that people in Yukon are not going to be in dignity and rights. I wonder if that is necessary when this Act pertains only to Yukon and Yukon laws, and, of course, we are at the mercy of the provinces and the Government of Canada when it comes to the *Constitution*. That will supersede anything we do here in any event. Can the Minister answer those questions?

**Hon. Mr. Kimmerly:** The clause is useful because it points out to people the way the law operates. The style of the Bill is that it is written in lay language, and it is designed to address the concerns, or the problems, which are in people's minds and to speak to them directly. The Member said that (2), and I am assuming that we are now on (2), is unnecessary and wrong. I would suggest it may be unnecessary from a strict legal point of view because it simply recognizes the Canadian *Constitution*. It is not wrong; it is entirely consistent with the Canadian *Constitution* and is included in contemplation of exactly the issues raised by the *Constitution*.

If one is of the view that aboriginal rights are a category of human rights and are not inconsistent with the other rights, there is no problem.

That is the view of some individuals in the territory; however, it is clearly the case that many individuals do consider aboriginal rights as a special category or a right of a special nature. What this clause does is to point out to people that the Bill does not apply to define aboriginal rights, because legally it cannot as that is already in the *Charter of Rights and Freedoms*.

**Mr. Phelps:** I wish it was that simple, but I think that time and time again, as we go through this Bill clause by clause, I suppose we are going to be finding the same fundamental problems namely, that this really is not a Bill that promotes equality; it is a Bill for special interests. When you do have a Bill that goes in that direction, the end result is inequality so that every individual is not free and equal in dignity and rights. With regard to the *Constitution* of Canada and the issue of aboriginal rights, that is something that is in the federal domain.

A problem that arises with clause 1(2), which reads, "This Act does not affect rights pertaining to aboriginal people established by the *Constitution* of Canada or by a land claims agreement." Firstly, it is not clear why it is there and certainly is not necessary unless the words "or by a land claims agreement" means something less than a settlement that is entrenched in the *Constitution* of Canada. A land claims agreement can mean almost any form of paper that is signed by various parties, and I have grave concerns about the need for 1(2) if it is really unnecessary, so I guess that as a Member of this Legislature I feel I have a duty to expect a good reason for including 1(2), and perhaps the Minister could start telling us what he means by a land claim agreement in that subsection.



**Hon. Mr. Kimmerly:** It is expected that the land claims agreement will define aboriginal rights and will find its way into settlement legislation or into legislation, either federally or territorially, or perhaps both. It depends on the result of a land claims agreement, but the phrase "land claims agreement" here is designed to identify exactly what we already know: that the land claims process and the agreements that may be reached under that process will define for us what aboriginal rights practically mean. They are in the *Constitution* now and are generally worded, as everyone knows. This clause here is to recognize that aboriginal rights will be dealt with separately from this particular Bill.

**Mr. Phelps:** Here we have something that is, firstly, beyond the jurisdiction of this government, and, secondly, is absolutely unnecessary unless there is some underhanded reason contemplated by the Minister. I object to that kind of approach to a Bill that is supposedly there with the object of ensuring that every individual is free and equal in dignity and rights.

I just do not understand why the Minister is coming forward with clause 1(2) unless it is for purely political motives. I am going to be asking that this subsection be deleted because it is unnecessary. Before I do that, I would like to know exactly what is meant by "land claims agreement". Is it any document whether or not it is entrenched in the *Constitution* signed by a government and an aboriginal peoples in Yukon?

**Hon. Mr. Kimmerly:** What we are really debating here is aboriginal rights, and I understand that there are differences of philosophy between the Members on that side and the Members on this side about aboriginal rights. In specific answer to the question, I would say this: if we left that section out, we would be criticized for passing legislation that is extremely general in its scope, and the objects are extremely general — they are designed that way — and, in fact, they would not apply in some areas where Yukoners would expect them to apply.

The completely honest and practical way to deal with these questions is to point out to the readers of this legislation, who are not lawyers and aware of the effect of Constitutional law, that the effect of the Bill, or the objects of the Bill, are to deal with the things within the jurisdiction of this Legislature. That is why it is pointed out. It is necessary to signal that. Indeed, if we did not, I would fully expect to be criticized for that.

The suggestion that this is here for purely political reasons, I simply do not understand. There are no politics, essentially, either for or against it. It is put in here because it is proper and appropriate to recognize what the objects of the Act are, and it signals the jurisdiction of this Bill. It clearly says that there is no object here to define what aboriginal rights are. That is the process that will be addressed in the land claims process. I would suggest that the phrase "the land claims agreement" means an agreement that is accepted by the parties, being the federal government, the territorial government, and the Indian interest, the Council for Yukon Indians.

**Mr. Phelps:** Can the Minister really tell us then that the land claims agreement is something that is really beyond the *Constitution* of Canada? Is that what he is saying? It is something that will not be entrenched in the *Constitution* of Canada? If he is saying that, I am not really sure what he is talking about.

**Hon. Mr. Kimmerly:** We are not aware what the results of the land claims agreement will be. There are legal opinions that they will, in fact, have a kind of constitutional force as a definition of what the *Constitution* means. As the Member well knows, there are contrary legal opinions. The result of a land claims agreement may be a constitutional amendment; it may not be. It may be settlement legislation on behalf of the federal government or territorial government, or may be all three. We simply do not know.

**Mr. Phelps:** The process established in the amendment to the *Constitution*, during the first few meetings of the First Ministers amended the *Constitution* of Canada for the first time since repatriation took place. Under that amendment, the land claims settlement, as Yukoners know it, would be entrenched within the *Constitution* of Canada, so again I do not understand why the words "or by a land claims agreement" are in there unless it means something else. Why is it in there?

**Hon. Mr. Kimmerly:** The land claims agreement will define

what aboriginal rights are pursuant to the *Constitution*. That is why it is there.

*Amendment proposed*

**Mr. Phelps:** That does not really help us at all.

I am going to propose an amendment to the Bill. I will be moving THAT Bill No. 99, entitled the *Human Rights Act* be amended in clause 1, on page 2, by deleting sub-clause (2).

**Chairman:** It has been moved by the Member for Hootalinqua THAT Bill No. 99 be amended in clause 1 on page 2 by deleting sub-clause (2).

**Mr. Phelps:** There are several reasons for my putting forward this amendment. The first one is that it goes against the whole idea that many Yukoners have that people should be treated equally. There have been a lot of people concerned that this would have unnecessary language in it, right at the start, that derogates from Clause 1(1), namely, that every individual is free and equal in dignity and rights.

Secondly, it is unnecessary, because it is simply a statement, in part at least, of fairly trite law. The *Constitution* of Canada overrides any laws that we may attempt to pass here.

Thirdly, the words "or by a land claims agreement" are either an unnecessary appendage to the main part of 1(2), or the Minister is trying to sneak something in through the backdoor that even he does not seem to understand.

The fourth reason is that the whole intent of this sub-clause is political, not legal, and it is a clause that will tend to mislead Indian people because of statements made by the Minister to reassure them that this *Human Rights Bill* when passed into law will not really affect them in their everyday life. The fact of the matter is that there is a whole host of ways in which this Act and this legislation will affect Indian people, because it will, and should, affect their companies, the hiring policies in companies, and there are a whole host of areas, broad areas, in terms of service and accommodation that they must provide and those kinds of things that will not give Indian people special status under the *Constitution* of Canada unless something comes along that we really are not expecting.

The sub-clause has that adverse effect and, again, it is entirely unnecessary because it goes against the grain of Yukoners who want to be treated equally in dignity and rights. I urge each and every individual in this House to vote for the motion.

**Hon. Mr. Kimmerly:** The debate has largely occurred, but I will respond to the remarks by the Leader of the Official Opposition.

He said that this concept goes against the idea that people should be treated equally. I would address those comments particularly, because I strenuously disagree with that being the effect of this clause. There is a sense here that because we put it in we have recognized aboriginal rights. I can say that, because it is clearly here and it refers to aboriginal rights, and I do not believe that the Yukon Legislature has recognized the concept of aboriginal rights in the past. It is not, in any sense, of any legal, practical importance because it simply refers to the *Constitution* and land claims agreements, and the *Constitution* overrides it in any event. It is, I would suggest irresponsible to pass a law that did not recognize aboriginal rights, because it is in the *Constitution*. We do, and we must, recognize aboriginal rights. We may, as the Member opposite suggested, disagree, but when we pass measures into law they must be consistent with the *Constitution* of Canada. I would suggest it is irresponsible to do otherwise, and what this does is define the objects of the Act. The purpose of Clause 1 is to explain the objects of the Act.

We are clearly and simply stating that one of the objects is not to affect aboriginal rights. That is the wording of the section.

The Member went on to talk about the general effect of this Bill on aboriginal people. He was absolutely correct in saying that this Bill does affect aboriginal people, just as it affects all people. There are some things governed by the *Constitution* that it would not affect. I would suggest that lay people reading the Bill would not know that if it were not signalled here and stated in clear language. This is a very responsible measure to accurately define exactly what is happening here.

**Mr. Phelps:** On the amendment, a couple of points need to be

made. Firstly, there is no such exception in any of the other Human Rights Acts in Canada. This is the only one that talks about not affecting rights of certain people. To be consistent, I suppose the Minister should ensure that a clause such as 1(2) should be included in each and every Bill passed in this House.

**Mr. Nordling:** On the amendment, I have heard the Minister say that it is unnecessary because it is provided for in the *Charter of Rights and Freedoms*, and that it is not of legal or practical significance. Previous to that, the Minister said that he has written the Act in layman's language, using simple words, and the Act is designed to use as few words as possible. In the spirit of keeping the Bill short and simple and not confusing, I would urge all Members of the House to support the amendment.

The Minister has said we must recognize aboriginal rights. It would be irresponsible not to. In Clause 1(1)(c) it is stated that we are promoting the "recognition of the inherent dignity and worth of the equal and inalienable rights of all Members of the human family, these being principles of the Canadian *Charter of Rights...*" The rights of aboriginal peoples are one of the principles underlying the Canadian *Charter of Rights and Freedoms*, and on that basis I do not think that it is necessary to include Clause 2. Obviously it has caused some confusion, and if it is not there it will not change the intent or the effect of the Bill, and to simplify things, as the Minister has expressed his wish to do in drafting this Bill, I think that the amendment should be supported and Clause 2 should be deleted as unnecessary.

<sup>27</sup> **Mr. Lang:** I will make an observation that I think is important and has not been given enough credence. In the review of all the Acts across the country, this particular section is not included in any other Bill that has been passed by any other Legislature. As my colleague, the Member for Porter Creek West, outlined, the Minister has stated that he wants to keep it as simple as he can for us simple folks. Maybe there is something that we do not know. Over and above the section that has been included in all Bills that the Member for Porter Creek West read out in respect to the *Canadian Charter of Rights and Freedoms* and the Declaration of Human Rights, why should we be going further by defining in law a section that the Minister is incapable of describing to us.

There has to be two other principles understood in that particular phrase in the Act, "by a land claims agreement". The land claims agreement will be paramount and will supersede all the laws in the *Human Rights Act* and would not apply to one sector of the population or there would be no other reason for that section being in the Bill. I think it would be irresponsible for us to give *carte blanche* to the government and tell them to proceed with it and they can tell us what it means later. I think the Minister should be looking, in a positive manner, at the amendment that has been brought forward by the Leader of the Official Opposition, and say that perhaps it should be deleted and that he has erred in the drafting of the bill. Obviously, to avoid confusion in many people's minds, it should be eliminated.

**Hon. Mr. Kimmery:** The statement was made that the Act is kept simple for "us simple folks". I meant that the Act should be written so that all folks can understand it. That is exactly what this section does. If this is not here, the understandability of the application of the Bill suffers very greatly. I think that is clear.

It is not in other Bills because other Bills were all passed before the Constitution. I would strongly expect that the new Bills, and even substantial amendments that are passed after the Constitution, will include things like this. It is unnecessary to put this in every Bill, because it is not an issue. It may be an issue in people's minds. The clause here is an objects clause, and the legislation is telling the reader, and all interpreters of the Act, what the purpose is. The purpose is to discourage and eliminate discrimination and to further the public policy that individuals are free and equal in dignity and rights and to promote the recognition of the inherent dignity and worth of all members of the human family.

It does not affect aboriginal rights, and the reason why is that we do not have any jurisdiction to affect aboriginal rights. If we did not put that in, many people — I would suggest all people — who were looking at the objects would say, "But what about aboriginal rights? What is the situation regarding land claims?"

<sup>28</sup> The intention here is to say that because we have no jurisdiction, because it is in the *Constitution*, and because the eventual agreements arrived at the land claims talks are not known, we have no object to legislate in that area at the present time, because we have no jurisdiction. We know clearly what it means, we know exactly what it means, that is what it means, and that is why it is there. It improves the Bill to include it.

**Mrs. Firth:** I want to ask the Minister to consider a point. I hear the Minister say that if this clause is not included, then the understandability of the Bill suffers. State who the understandability is for, and which members of the human family will not understand the Bill if it is not included?

If Clause 1(c) of the objects identifies the *Charter of Rights and Freedoms* and the aboriginal rights, why does the Minister feel he has to flag it? If it is causing misunderstanding, which I would submit is both with Indian people thinking they have more rights because of this, and with the other non-native people who in some way would think that the Indian people have more rights. Why would the Minister be so specific in flagging this when he will not be so specific about other areas of the Bill that everyone has concerns about — areas such as the Commission's powers and the Annual Report and so on. That is where the inconsistency lies in the drafting of the Minister's Bill.

**Hon. Mr. Kimmery:** There were two questions. The first was who would be misled, and I would suggest all people, regardless of race and education, if they were not aware of the principles of constitutional law and the fact that aboriginal rights are in the *Constitution*. Now that category of person, I would suggest, is a small number, so this addresses itself to most people who read the Act.

The question here about the readability is an interesting one. If the only issue is understandability and readability, why are Members opposed to it? It seems to me that the real issue was stated by the Leader of the Official Opposition when he said that this goes against the idea that people should be treated equally, saying by that that aboriginal rights go against that idea. I would suggest he is wrong in that statement, and that in fact aboriginal rights are a way to treat the races of the Yukon according to equality principles in the final analysis.

The issue is: are you for or against aboriginal rights. This statement here clearly recognizes the concept and the legal reality of aboriginal rights. It is only sensible and prudent to do so.

<sup>29</sup> **Mr. Webster:** Are you ready for the question?

**Some Hon. Members:** Yes.

**Mr. Webster:** Are you agreed?

**Some Hon. Members:** Agree.

**Some Hon. members:** Disagree.

**Mr. Webster:** I think the nays have it.

*Amendment negatived*

**Chairman:** Is there any further debate on Clause 1?

*Amendment proposed*

**Mr. Phelps:** I have another amendment. Getting back to the readability of the Act, the vacuous words of the Minister, the words after "Canada" are clearly unclear — "or by a land claims agreement". It is my submission that for the issue of certainty those words ought to be deleted.

Accordingly, I am moving that Bill No. 99, entitled *Human Rights Act*, be amended in Clause 1(2), page 2, by deleting the words following "Canada".

**Chairman:** The amendment is in order.

It is moved by the Member for Hootalinqua that Bill No. 99 be amended in Clause 1(2), on page 2, by deleting the words following "Canada".

**Mr. Phelps:** Speaking to that, if there is to be a land claims settlement then by the wording of the *Constitution* as amended the land claims settlement will be entrenched in that *Constitution*. Accordingly, those words are unnecessary unless the Minister is talking about other kinds of land claims agreements that are not contemplated by most Yukoners when one speaks on the subject.

I think, in the interests of honesty and straightforwardness and in the interests of decent drafting principles, I urge all Members of this Legislature to support the motion.

**Hon. Mr. Kimmerly:** This is essentially the same argument — well it is not essentially, it is exactly the same argument — as was made before. I would suggest that the words “land claims agreement” are clearly understandable, and we know what a land claims agreement is. I expect if you ask citizens on the street they will have a right answer as to what that means. A phrase here defines in the public mind exactly what we are talking about, and I would suggest that it lends clarity to the process of what the objects of the Act are, and what the objects are not. I have listened to the general arguments for deleting these words, I have not heard any specific case. In the process of drafting, of course, we considered seriously, in fact, every single word. The purpose here is to define what an aboriginal right may be that would not be affected by this Act. Now this wording does that very well, and I think that there is no problem of misinterpretation along the line, so I would suggest that there is absolutely no harm done by leaving the words in, and there is a substantial clarity gained.

I would say at the end of this argument that if the opposition is prepared with amendments as we go along, I would appreciate, in the spirit of studying them very thoroughly, an opportunity for some notice of those amendments.

<sup>30</sup> I would say here that I have certainly not heard a compelling argument to delete those words.

**Mr. Phelps:** It is unfortunate that the Minister fails to understand the point. In the spirit of trying to reach him, perhaps he could answer a question. Is he saying that there can be a land claims settlement or agreement that is enforceable that will not be established and entrenched in the *Constitution* of Canada?

**Hon. Mr. Kimmerly:** It is my understanding that that is the interpretation of some as a possible result of a land claims process, yes.

**Mr. Phelps:** Would he not agree that the whole purpose and intent of the amendments to section 37 of the *Charter of Rights and Freedoms* and the *Constitution* was to ensure that a land claims settlement would become part of the *Constitution*?

**Hon. Mr. Kimmerly:** I certainly agree with that general proposition, but we do not know what the result of the land claims process will be. Whether it is a Constitutional amendment in general terms and settlement legislation elsewhere seems a distinct possibility.

**Mr. Phelps:** If the *Constitution* was amended so that land claims settlements would be entrenched in the *Constitution* and established by the *Constitution of Canada*, the words “or by a land claims agreement” signifies some other kind of settlement or agreement. What other kind of land claims agreement is he contemplating if it is not one that is entrenched in the *Constitution* and becomes part of the *Constitution*. That is the concern. The word “or” implies something different from a settlement that is going to be entrenched in the *Constitution*. Does the Minister understand the point now?

**Hon. Mr. Kimmerly:** Yes, I understand the point, but I do not accept that there is any practical significance.

**Mr. Nordling:** The Minister said that we were dealing with the same argument as with the previous amendment. I do not see it as the same argument. I recognize aboriginal rights. I was arguing that if they were already included, we should simplify the Act by deleting the section.

By deleting the words “or by a land claims agreement”, will clear up our intent to recognize the rights of aboriginal peoples without confusing readers of the Bill with the words “land claims agreement”. Including those words, the section can be read as “This Act does not affect rights established by a land claims agreement.”

I am sure some people would interpret that — and the Minister may say they are wrong — it is possible that a land claims agreement could have a phrase or clause in it, “The Yukon *Human Rights Act* does not apply to aboriginal peoples” as a term of their land claims agreement.

<sup>31</sup> To me, that may be a concern and cause confusion. If it does, we can delete those words and, in effect, we have the same Bill the Minister wants with slightly less confusion.

**Hon. Mr. Kimmerly:** The fallacy of that argument is that it has

been argued by the same side that the land claim agreement will have constitutional force. If they do, there is no practical difference.

**Mr. Nordling:** My point was simply that there is confusion caused by those that will interpret this Bill. If we wish to avoid confusion, there is no reason that those words cannot or should not be deleted.

The Minister argued with respect to the other amendment that the whole clause was unnecessary, that it had no legal or practical effect. It was just to recognize aboriginal rights. We are doing that, without confusion, by deleting the words, “or by a land claims agreement”.

**Hon. Mr. Kimmerly:** Briefly, and as the Member being a lawyer well knows, it is possible to leave out entirely the objects clause of the Bill. This is an aid to the interpretation of the Bill and does not create any right at all in itself. However, the preamble and the objects are put there to express the purpose of the Bill, which is there to assist in the interpretation and the readability and understandability of the Bill. Anything that detracts from that readability and understandability in the objects clause should be left out. Anything that improves it should be included. We have, in the process of drafting this Bill, tried drafts with lay people and asked them to read it and explain what they understand the words to mean, as well as doing the same thing with legally-trained individuals. The understandability of land claims agreements in Yukon is very clear. People know what we are talking about when we talk about land claims, at least in the general sense of the objects we are getting at.

The concept of aboriginal rights in the *Constitution* is not well understood. I would argue that this improves very substantially the understandability and readability of this clause.

<sup>32</sup> **Mr. McLachlan:** I would like to submit to the government side that I have some credence in the submission that has been put forward by the Leader of the Official Opposition. By just generally stating the last four or five words of the clause, it simply says, “by a land claims agreement”. I would have to ask: “Whose?” The very obvious answer is for the Minister to come back with his “by Yukon’s”, because we are talking about a Yukon piece of legislation.

However, I would further submit to the Minister that at a time when at least five other groups are impinging upon Yukon’s borders and trying to help themselves extensively to our fish, wildlife, and land — whether that be the Dene Nation, whether that be the Tahltans from Atlin — I think it is important to recognize that their land claims agreements may be negotiated at the same time as the general one we are referring to, the Yukon land claims agreement, and you may, in fact, have a problem of interpretation as to whose or what or general applicability.

I would submit to the government side if, in fact, they are uncomfortable with the deletion that they clarify what is meant by the final part of the thing and specifically relate it to a tie-down. It could be made clearer by an amendment to the amendment.

**Hon. Mr. Kimmerly:** I see the point, and it may be more understandable to put in here “by a Yukon land claims agreement”. It may address the problem. It would have no practical difference; it would not mean a change one way or the other in the practical effect. As the Leader of the Official Opposition has already stated, land claims agreements, at least, according to him, have constitutional effect anyway, whether they are ours or anyone’s. I would argue that that particular kind of amendment would not improve the situation; it would add another word and be, possibly, a further source of confusion.

#### *Amendment negatived*

**Chairman:** Any further debate on Clause 1(1) or (2)?

**Mr. Lang:** I would just like to make an observation with respect to general conduct in the Bill so far. I find it interesting that on any ideas that have been put forward, the Minister, in his normal course of events in debating, makes a point of saying that there is really no point of view being put forward from this side. The impression that he has left with the public is that they are more than prepared to listen to reasoned amendments, which have been put forward thus far. It really brings into question the whole credibility

the so-called consultation and the government's willingness to listen to reason.

I do take affront to the obvious quiet arrogance that comes across the floor with respect to the points that have been put forward by, specifically, my learned colleague, the Leader of the Official Opposition, talking about an area that he is very well-versed in, better than anyone else in this House. I take some affront at the Minister just kind of dismissing it out of hand without giving it due consideration.

I just want to impress upon the government, and specifically the Minister of Justice, that we are taking this Bill very seriously. We have not put the time and effort into bringing forward amendments just because we have nothing else to do with our time. I think that they should be given a little more credence than the obvious efforts by the Minister in this last debate on the amendments that have been put forward. He never gave us a reason why it was there. There was no substantive reason why it was put in. I am sure that if anybody reads the *Hansard*, obviously there must be a hidden motive if he cannot tell us why it is there.

<sup>33</sup> We have put the point of view forward for clarity, and to ensure that there is not a hidden agenda of any kind, let us get rid of it. At the same time, we are supposed to respectfully submit to the Minister a point of view and have it clearly debated. I take affront to that. On one hand, the Minister will rush to CBC or to the media and talk about how he is prepared to listen and at the same time we get this type of an arrogant attitude, quiet as it may be, brought forward in the House.

**Hon. Mr. Kimmerly:** As those comments were totally out of order, I will respond very briefly. The situation would be improved if we had some time to consider the amendments that are coming forward. I will certainly ask to stand over, or if possible, we can agree immediately with some amendments.

This particular amendment was debated, and I would argue that the issue was defined on both sides as being readable and understandable, and, strictly speaking, the words are unnecessary; that is common ground. I would submit that on the substantive matters spoken in part (1) and on serious amendments, we should consider them over an adjournment at least and possibly overnight, and discuss the amendments among the various caucuses as well, which would be a useful part of the debate if that is possible.

**Mr. Lang:** This is the public forum, and I hope the Minister is not indicating to us that we will be making private deals in the corridor and bringing them in here to rubber stamp.

As he full well knows, and as he said, he has the ability — and he will have the approbation of this side — if he wants an afternoon or day to consider any specific amendment brought forward. Every Member of this House has the power to ask for that, and I do not believe in the time I have been here any reasonable request to have an issue or clause stood aside for consideration has been denied. This House has probably been the fairest in the country, as far as that goes. With due respect, he will get his amendments as we go through. As he knows, many of them are tied together, depending on what has happened initially. If he wants some time to consider them, fine.

<sup>34</sup> *Clause 1 agreed to*

*On Clause 2*

*Clause 2 agreed to*

*On Clause 3*

**Mr. Nordling:** My comment and question will actually apply to Clauses 3, 4 and 5 and the question is with respect to "and every group" being included along with "every individual enjoying the right to freedom of religion, conscience, opinion and belief". This was discussed briefly on January 12 in general debate. The Minister explained that the government wished to acknowledge the question of group rights as well as individual rights. As a concrete example, the Minister cited a church congregation wishing to employ a teacher to make the restriction that the teacher be a member of the congregation; they are expressing a group right as opposed to an individual right.

The Minister went on a little bit later to say that there had been consultation with commissions around the country and some of them advised us that "in some particular cases, the absence of the

phrase 'or group' or 'and every group' was a problem." The Minister said he would supply that information at a future date, perhaps tomorrow. Does the Minister now have the information that will tell us what problems would be caused by leaving out the words "and every group"?

My feeling is that by having "every individual", we have covered groups. As the Minister has said, and I agree, that any gathering of individuals makes a group and just because a group of individuals have the same ideas and philosophy such as a religious group, I would think that the rights of that religious group would be covered by the individual rights of each member of that group. I would like to hear more from the Minister on that.

**Hon. Mr. Kimmerly:** Perhaps the hardest question here about group rights is aboriginal rights, because the argument in favour of aboriginal rights as a human right are that they are a group right and that it is a right not exercised by one individual but by a group. There are some other things that can only be exercised by groups; many of them are cultural. As an example, the cultural activities for some groups of particular ethnic origins involves folk-dancing, which involves a group, and in order to protect the culture you need to protect not only each particular individual, but you need to protect a group activity.

<sup>35</sup> There are some religions that hold very, very dear their right to do things in a group, particularly worship, and those group rights specifically need mentioning in this kind of legislation. It is recognized, in fact, in many of the international agreements, especially in multi-ethnic societies, that the group is deserving of protection and it is necessary to do that even independently of the single individual. To remove the phrase "a group" would be inconsistent with section 11, which is systemic discrimination that can only be established, or the concept depends upon the practice of discriminating against a particular group, which may have a practical effect on that individual. The concept is a discrimination against the group, most often a race, but it could be other groups as well.

A concept of a group rights is essential when considering the co-existence of the different races in the same society. The object of the Bill, object 2, called them a multicultural heritage. There is phraseology about the preservation and enhancement of the multicultural heritage of the residents of the territory.

A definition of a cultural heritage very, very often involves a group activity, and those group activities should be protected as well as individual activities. As a practical example, if you want to protect a person's right to engage in Scottish Highland dancing, for example, many of the dances are done in a group, and it is necessary to pay attention to that entire group. The most obvious example is the entire question of aboriginal rights.

<sup>36</sup> **Mr. Nordling:** Is the Minister saying that the problem with leaving "and every group" out is that their basic rights can be denied if that phrase is not in the Bill? My interpretation is that discrimination against any group, be it racial or religious, would be discrimination against each and every individual in the group, and their rights would be protected under the individual rights.

**Hon. Mr. Kimmerly:** No, that is not the case. If there is a right that is enjoyed by aboriginal people, it is enjoyed by the people as a group, and the individual does not have that right unless there is a group right for a group of people.

**Mr. Lang:** I thought this Bill did not affect aboriginal people with respect to the first amendment we dealt with. You just said clearly that the purpose of the previous section we voted on was for clarity to ensure that this Bill would not affect aboriginal groups or aboriginal title. Now you are using this as an excuse for another section of the Bill.

**Hon. Mr. Kimmerly:** It is not accurate to say that this Bill does not affect aboriginal people. The Leader of the Conservative Opposition stated it entirely correctly when he stated that it does affect aboriginal people; however, it will not affect those rights that are guaranteed in the *Constitution*.

**Mr. Phelps:** This goes on and on. Really Clause 1(2) says this Act does not affect the rights pertaining to aboriginal peoples as established by the *Constitution of Canada* or by a land claims agreement. That is the group rights known as aboriginal rights.

We have said that it does affect rights, but not the group rights. Surely the Minister is not going to try to have it both ways here too.

**Hon. Mr. Kimmerly:** It is clearer if we use another example. I was using aboriginal rights as an example. A clearer example that would not be confused with clause 1 is sex. There may be a right that is enjoyed exclusively by men or by women. I am trying to think of a concrete example. In that way, it would be a group right as opposed to an individual right.

<sup>37</sup> **Mr. Nordling:** The Minister gave examples of groups. Earlier, he said aboriginal groups were the best example. He gave examples of religious groups, cultural groups; he even mentioned Scottish dancers. Is the Minister saying that in all jurisdictions where the words, "and every group" or the words "or group" are not included, and the rights are only given to every individual, that these groups are in danger of losing their rights; That they can be discriminated against and their rights can be taken away from them as a group because those words are not included?

**Hon. Mr. Kimmerly:** There are some specific cases that certainly are clear about the point that if the words "and every group" are not there, then the right for the individual is, in fact, lost. I will get an example and give the case to the Member opposite; I do not have it at my fingertips at this moment.

**Mr. Nordling:** I had not planned to propose an amendment or anything so I am sure the words "and every group" will stay there, but I would like to see the case because it would be quite interesting. My position would be that every individual has the right to do their own thing, have their freedom of religion, conscience, opinion and belief, and that every individual that wanted to would have the right to Scottish dance or to pray in the way they wished.

**Mr. Lang:** It is important to point out that one of the reasons this question has come up is because of a review in most of the other pieces of legislation that refer to the individual and do not refer to a group, or groups. I found the Minister's example interesting. I think he referred to group sex or something like that, and I would like him to expand on that. It did not make any sense to me. Just exactly what does he mean by that?

**Hon. Mr. Kimmerly:** I was not expecting to go this fast, and I do not have specific notes about specific cases at my fingertips, but I can supply them. After an adjournment, I am sure I will be able to address exactly that question. I only need a few minutes.

<sup>38</sup> **Mr. Lang:** I would move we have a short recess.

**Chairman:** We will now recess for 15 minutes.

#### Recess

**Chairman:** Committee of the Whole will come to order.

**Hon. Mr. Kimmerly:** I am told that the information that I promised is on its way here. I will present it when it is available. I have no objection if we stand these sections aside if that is the will of the Members opposite.

**Chairman:** Is it agreeable with Members to stand over clauses 3, 4 and 5?

**Mr. Nordling:** I do not think it is necessary to stand them aside. I was not going to amend it to delete those words. I think we can clear them as they are. The reasons for the question was to clarify the inclusion of those words.

**Mr. Phelps:** I would like to stand them aside until we see the information.

**Chairman:** It is agreed we will stand aside clauses 3, 4 and 5.

*Clause 3 stood over*

*Clause 4 stood over*

*Clause 5 stood over*

**Chairman:** We will take these one at a time.

**Hon. Mr. Kimmerly:** I am expecting an amendment, not solely on any of (a) to (l), but about the introductory words. If the Members opposite do not have an amendment, I will be asking possibly to consider one from the government. The general issue here was raised in general debate about the insurance industry. It is possible to put in an exclusion specifically for the insurance industry. However, as I explained earlier, the question of reasonable cause, which was raised, is dealt with here by using the concept of unfavourably discriminating against individuals or

groups. I would be most interested in particular amendments, if there are any, about this general issue. I would suggest that that is the first issue under Clause 6.

<sup>39</sup> **Mr. Phelps:** There is every intention to bring forward an amendment to Clause 6 as well as Clause 8. The Member for Porter Creek West, I understand, was going to bring those forward. I believe the bona fide and reasonable clause type of amendment is at the end of 6. Just to put the Minister on notice, and, perhaps, before we break this afternoon we can give him a copy of that suggested clause.

Another point is that we have stood aside 3, 4 and 5, but before we get to 6 I understand that the Member from Whitehorse Riverdale North has an amendment that will follow Clause 5 as it sits on the Bill at this time.

**Chairman:** Do you wish to table that?

**Mr. Phillips:** Yes. I wonder if we could debate it at this time, or do you wish to stand it aside and deal with it later?

**Hon. Mr. Kimmerly:** I would suggest that if there is an amendment to follow Clause 5 — I am assuming it is about property rights — this is the appropriate time to introduce it.

**Chairman:** Is it the wish to the Committee to return to Clause 5 debate and to hear the amendment?

**Some Members:** Agreed.

**Mr. Lang:** Just a clarification for the Chair. What we are proposing is a new section for the Bill, which would be section 6. We are not amending sections 3, 4 or 5, we are adding a new section to the Bill in respect to the Act.

**Chairman:** Just so there is no further confusion whether it is indeed 5.1 or Clause 6 could we hear the proposed suggestion.

*Amendment proposed*

**Mr. Phillips:** I have to go back to the words of the Justice Minister early today when he stated that anything that improves this Bill should be included and, for that reason, I move that Bill No. 99 entitled Human Rights Act be amended in Clause 5, page 2, by adding immediately thereafter the following: "Right to enjoyment of property. 5.1 Everyone has the right to the enjoyment of property and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

<sup>40</sup> **Chairman:** We will consider this addition as Clause 5.1; it is in order.

**Mr. Phillips:** This motion may sound familiar, and well it should, because it is a scaled down version of the motion that was passed by this House on November 24, 1982 for inclusion in the Canadian *Constitution* and also the motion that I presented in the House for debate on January 7, 1987.

What better place to start with property rights but right here in our own House. In view of what the Minister of Justice has said about property rights in previous debates, I must admit that I was very surprised that some mention of property rights was not included in Bill 99. Property rights are conspicuous by their absence in this *Human Rights Act*. I find it even more surprising, in view of the fact that there is a property rights provision in the Quebec *Charter of Rights and Freedoms*. The Quebec *Human Rights Act* obviously was one of the provincial models that Bill 99 was based upon. The Minister of Justice readily accepted the inclusion of Sex Orientation as prohibited grounds from the Quebec *Human Rights Act*, but he overlooked the provision for peaceful enjoyment of property. The Quebec *Charter of Human Rights and Freedoms* states in section 6 "Every person has the right to the peaceful enjoyment and free disposition of his property except to the extent provided by law." If the Minister of Justice and his party were truly serious about property rights, why is it not included in Bill 99? What are the reasons for excluding property rights at this time?

I reviewed the previous debates of property rights in this House in order to ascertain what problems the Minister might have when including property rights in the *Human Rights Act*. I note that the Minister's concerns appear to relate only to including property rights in the Canadian *Constitution*. For example, he spoke of a concern about property rights interfering with a provincial jurisdiction over property rights. Clearly, the concern would not apply in this instance if we are dealing solely within territorial jurisdiction.

A second concern appears to be that human rights should not be superseded by property rights. This concern once again was stated in context of including property rights in the Canadian *Constitution*. I take it that it would not stand if property rights were included as one of the human rights that an individual should enjoy in a Yukon *Human Rights Act*.

That is effectively what my men would do, it would include property rights as a fundamental human right. That is the way I perceive property rights. It is a fundamental human right, and it should not be treated as something separate or apart from human rights, or opposed to human rights. As with all rights, there has to be an appropriate balance. The enjoyment of one right should not preclude the enjoyment or exercise of another human right. The Minister of Justice has raised a concern about the effect the recognition of property rights may have on aboriginal rights, and vice versa. Once again, it would appear that this concern does not stand in relation to enshrining property rights in the *Human Rights Act*.

41 First of all, it should be recognized that the Yukon Indian land claim will be settled and concluded by an Act of the federal Parliament. Further, the settlement will enjoy the protection of the Canadian *Constitution*. The *Yukon Indian Land Claim Settlement Act* will take precedence over the *Yukon Act* and all territorial legislation. The *Yukon Act*, as you know, is subject to any other federal Act.

Secondly, the vast majority of and in Yukon is still federal land and both the federal government and the Yukon government are committed to settling the claim of the Yukon Indian people.

Thirdly, land alienations under the 1984 agreement in Yukon are fairly limited and lands selected by Bands in the 1984 Agreement-in-Principle are still withdrawn from protection. Also in the land selection process, under the Yukon Indian claim, extreme care was taken, at least under the previous negotiations, to avoid third-party conflicts with Indian land selections. Generally, third-party alienations were exempted from selection, so there should be no conflicts.

Accordingly, including property rights as a right under the *Human Rights Act* will not affect the Yukon Indian claim. There is a question as to what form the property rights provision should take. We could take the wording of the Quebec property rights provision that "every person has the right to the peaceful enjoyment and free disposition of his property except to the extent provided by law". This particular wording, in my view, is mainly a statement of intent, if you like. Its effect is more symbolic rather than legal. The words, "except to the extent provided by law" gives the government of the day considerable leeway as to how property rights will be respected. To override the property rights guarantee, the government could merely pass another law.

The amendment I have put forward is considerably stronger. The phrase "except in accordance with the principles of fundamental justice" is much tougher and broader in scope than the phrase "except to the extent provided by law". Previously, fundamental justice has been interpreted by the courts to guarantee due process of law and natural justice. However, more recently the courts are taking a broader view of fundamental justice to include other substantive matters, such as good faith, in addition to guaranteeing natural justice.

Undoubtedly, the courts will view the wording of this particular amendment as constituting a fairly strong guarantee of property rights.

As legislators, we must be as clear as we possibly can in drafting legislation. I believe the wording of this amendment is clear, that it is the will of this House to have a strong guarantee of property rights in the Yukon *Human Rights Act*, that property rights should be and are a basic human right and should be treated as such. I commend this amendment to the House.

42 **Hon. Mr. Kimmerly:** I thank Mr. Phillips for his research and his address about property rights. I would agree that this is a serious issue. It is true, of course, that property rights are contained in the Quebec *Bill of Rights*, but not any other province. I would suggest the reason why they are not in other provincial legislation is essentially two-fold. One of the arguments is that the laws pertaining to property are fairly well settled in this country. Passing

new laws in the nature of constitutional general principles may have the effect of unsettling some of the laws, especially with regard to property and with businesses in general. The certainty of the law is extremely desirable in that business people can operate under almost any law as long as they know clearly what the rules are. That is the first general argument.

The second general argument was alluded to by the proposer of this amendment in his speech. It is that governments have been loathe to grant powers to the courts over property which they do not now clearly have. To put it another way, I do not think anybody will argue that if there is to be an expropriation, that that expropriation ought to occur along the principles of fundamental justice and the principles of natural justice; however, whether the courts ought to be allowed the opportunity of looking at whether that expropriation should occur or not is a hard question to answer. It is that particular question that has given Legislatures the most difficulty.

It is my opinion that that is the most important reason why property rights are not in the Canadian *Charter of Rights and Freedoms* now and why they are not in provincial legislation.

I have researched the question of property rights. I will read into *Hansard* two other possibilities. These are not novel; these are copied, as the Member for Riverdale North has copied a declaration of property rights. I will introduce two others into the discussion, which come from international conventions.

43 First of all, adapting the wording to the Yukon Bill, there could be a section as follows — this is from the first protocol to the European Convention on Human Rights — and I quote: "1. Everyone is entitled to the peaceful enjoyment of property. No one shall be deprived of their property except in the public interest and in accordance with the law.

"2. Subsection (1) shall not be construed so as to impair the power of the institutions of the government to enforce laws to control the use of property in the general interest or to secure the payment of taxes or other contributions or of penalties."

There is another section in the European Convention on Human Rights, and it could be adapted to our legislation as follows: "Every individual has the right to the enjoyment of property, to the extent this right is necessary to secure the constitutional right to life, liberty and security of the person, and the right not to be deprived of his or her property except by due process of law and with just compensation."

I have read those into *Hansard* for a particular reason. They are the expressions of property right that I have been able to find that exist in international convention. It is interesting, of course, that Canada is part of this convention.

This concept, of course, is a very important one. I would be particularly eager now to debate the extent of the property right that is proposed by the Member opposite. In practical effect, the property right, of course, will impact on the right of expropriation, which is now a part of our law under the *Expropriation Act*. It is a very old piece of legislation; it is about 1 or 2 pages long, which essentially gives the power to the government to expropriate when and where it chooses, and the only consideration is in the price. The *Expropriation Act* sets up a procedure to establish the price of expropriated land and a procedure to appeal to the Supreme Court, so the procedure is essentially a judicially determined procedure to establish the price.

However, it is absolutely clear under our present expropriation law that the court has no power whatsoever to look into the question of whether the expropriation should occur or not. That is clearly a government power under our present law.

I would ask the proposer of the amendment, if he can, to clearly answer or clearly state what is the position of Members opposite. Is it your position that the power to expropriate should be in the executive arm of government or should it be subject to a judicial determination?

44 **Mr. Phelps:** My understanding of the position being put forward is that power would remain in the executive arm of the government. Whether an amendment might be required to satisfy all Members as to the correct balance, I suppose, is the issue before us. I certainly appreciate hearing the comments of the Minister of



Justice, given the interesting alternate wordings he has presented, as to what the government would see as its position.

**Hon. Mr. Kimmerly:** The alternate wordings, I would be careful to say, are not, at this time anyway, proposed by the government. They are proposed as discussion items. To put it another way, I have done the research myself and do not have the concurrence of either the Cabinet or Caucus to actually present amendments to that effect. It certainly clearly defines the real issue and, as I clearly stated, the position of the Conservatives is that there should be a property right; however, there should also be a power of expropriation in the government, as is currently the law.

The wording that is put forward in this amendment is problematic, because I have researched exactly this question around this wording. The wording could be interpreted by a court — and I would suggest, probably would be interpreted by a court certainly capable of that interpretation — that expropriation by itself would be looked at by the court. To put it in layperson's language, the judge will decide whether they should be allowed to expropriate or not.

I would suggest that that is a power that has traditionally been in the hands of the government for the public benefit, for very good reasons. It was certainly the policy under the previous government, because they did not change the *Expropriation Act*.

I would suggest that if we are to accept a guarantee of property rights, that there be some change in the wording as presented, in order to fundamentally protect property, or the right of enjoyment of property, to recognize the potential of that conflict with an expropriation for the public good, for example, to build a dam, for public safety, or something like that.

<sup>45</sup> The wording I have read, I think, accommodates that. Let me say, initially, that there are some weaknesses in the declaration of the property rights in the wording that I have read in that it is not as clear a definition of property right in the sense that individuals ought to be free to enjoy their property as is presented by the Member for Riverdale North.

I would welcome an opportunity to discuss this further, because, frankly, I was unaware of the precise position of the Conservative Party. As I now understand it, I think there is a possibility of wording an amendment that accommodates the aim expressed and does not interfere with the public interest and the right to expropriate. Consequently, I would not like to end the debate unless other Members have nothing to add. At the end of the debate today, I would like to stand over the amendment for consideration overnight.

**Mr. Phelps:** Just to move the discussion ahead then, I take it that the elements with regard to the deprivation of a person's enjoyment of his property would be threefold: public interest would be one test; due process of law would be a second test — if I understand the Minister — and third would be fair compensation. It seems that those three elements ought to be combined into the motion.

Given that those elements were identified in such an amendment, is it the government's position that they would go along with that sort of a principle?

**Hon. Mr. Kimmerly:** In order to be absolutely clear, as I understand it, of the three elements, the first one would not be subject to judicial determination, but the second two would. Under that principle, let me say that it is my view that it is appropriate to arrive at a wording that accomplishes those aims. It is something that I am clearly obligated to take to the government Caucus and possibly Cabinet, but it is certainly very worthy of discussion.

<sup>46</sup> **Mr. Phelps:** We may be able to shorten the debate by standing this amendment over. Just on the record, then, that the expropriation or deprivation of public property, enjoyment of property would be where it was in the public interest, which would not be an issue under judicial review, or there was a guarantee of due process of law included in the clause, as well as current compensation under the laws of enjoyment of property. One other observation I would make is that the way it reads now everyone has the right to enjoyment of property, and it seems to me it ought to be qualified as his or her property if we are going to be looking at specific wording.

**Hon. Mr. Kimmerly:** Yes, I agree. The addition of one's own property qualifies the English and the obvious intent extremely well. I will make this commitment to myself and to work on the wording of a particular amendment that encompasses those goals as stated, and we can discuss it further.

**Mr. Phelps:** I would be interested in possibly receiving copies of the two alternate wordings that the Minister finds, just to have a look at them. The second one seemed to me, and I did not have a chance to jot the full clause down, that it did incorporate three separate thoughts.

<sup>47</sup> **Chairman:** Is it agreed then to stand over this amendment in Clause 5?

**Some Members:** Agreed.

*Amendment to Clause 5 stood over*

*Clause 5 stood over*

**Chairman:** Part 2, Discriminatory Practices.

*On Clause 6*

**Mr. Nordling:** With respect to Clause 6, I will be proposing an amendment at the end after we have dealt with all of the subsections to (l). The amendment will be at that time to add the words, "unless bona fide and reasonable cause exists for the discrimination." I have sent a copy of that amendment to the Minister. The idea would be that that phrase would carry on from the first phrase. "It is discrimination to treat any individual or group unfavourably on any of the following grounds" — they are specified — and then, "unless bona fide and reasonable cause exists for the discrimination." Perhaps that will take care of some of the concern expressed by the Minister, and I think that would speed things up. I will be talking about sub-clause (e) also — the age after a person's nineteenth birthday. I think the concern with age would be taken care of by the amendment. The words "after a person's 19th birthday" would be taken care of by the words "unless bona fide and reasonable cause exists for the discrimination."

<sup>48</sup> **Hon. Mr. Kimmerly:** I thank Mr. Nordling for the notice of the amendment. I had already indicated that there certainly is concern on my part about the particular implications of this wording. We had drafted alternate wordings. Indeed, the old Bill, 58, has precisely these words in it. We had attempted to find a substitute for the Latin phrase "bona fide"; however, it may be that that phrase is certainly understood by very many people, and it exists in the jurisprudence for many of the cases already. It is unavoidable to use a phrase like that. In any event, I thank the Member for notice of that amendment, and we will discuss it further, obviously.

Under Section (e), "age after a person's nineteenth birthday", I do not seriously object or seriously argue with the proposition put forward. Age is certainly already in the Canadian *Charter of Rights and Freedoms* and it is unrestricted in the *Charter*. There is a substantial argument for including age and not restricting it. The reason for including "after a person's nineteenth birthday" was essentially for public clarity: to make it extremely clear that things like the establishment of ages for a driver's license and the ability to drink in licensed premises is not changed. I totally agree that with adequate protection about reasonable or bona fide cause that there is no problem about age and driver's licenses and drinking ages are, in fact, not changed here — also, the age restrictions on, for example, hockey teams, or any kind of teams, or the ability to get into school, and those kind of things. This was included as an effort to be as clear as possible; however, I, as a person, can certainly be convinced that it is not necessary.

<sup>49</sup> **Mr. Phelps:** In view of the hour, I would like to table two amendments to clause 6 for this evening. I am sure neither of them are unexpected. One is "to delete paragraph (g) of clause 6." The second, again dealing with Clause 6, reads as follows: "Bill No. 99, entitled *Human Rights Act* be amended in Clause 6 on page 3, by deleting the words 'criminal charges or criminal record' in paragraph (i), and by substituting therefor the following words 'criminal conviction for which a pardon has been granted'."

Having tabled those by way of notice for this evening's debate, I respectfully move that we adjourn until 7:30.

**Chairman:** There is a motion to recess until 7:30.

*Motion agreed to*

<sup>01</sup> Recess

**Chairman:** Committee of the Whole will now come to order. We will continue with the *Human Rights Act*, clause 6.

**Mr. Nordling:** On Clause 6(e), perhaps we can leave it until we decide whether the amendment at the end will be accepted or not. Then, I believe, "after a person's nineteenth birthday" will not be required. I do not want to bring an amendment at this time to delete those words.

**Chairman:** Very well; it is agreed that we will stand over (e).  
*Amendment proposed*

**Mr. Phelps:** In Clause 6(g) I give notice of a motion that Bill No. 99, entitled *Human Rights Act*, be amended in Clause 6 at page 3 by deleting paragraph (g).

<sup>02</sup> **Chairman:** Is there any debate on the amendment?

**Hon. Mr. Kimmerly:** Considerable debate has occurred in general debate and certainly in the media and in letters to the editor and the like, on this issue. I am going to be very brief in introduction.

The debate occurred in some length in Ontario just recently, and I am sure Members have read those debates. Some of the speeches were enlightening, and many were simply expressing attitudes, mostly negative, towards homosexuals.

The position of the government is very, very clear that it is not the duty or the place of government to legislate morality or a moral view or moral lifestyle. We certainly have an obligation to legislate in the criminal areas, and that is a federal jurisdiction. It was until 1968, I believe — I may be wrong about the year — illegal to engage in homosexual acts in Canada, but that has been changed, and it is now clearly legal. So it is about acts that are within the law. This particular Bill, in its definition section, has restricted the meaning of sexual orientation to acts that are within the law, and that is in Clause 34. The phrasing is "sexual orientation means heterosexual, homosexual and bisexual and refers only to consenting adults acting within the law."

<sup>03</sup> It is restrictive; in fact, more restrictive than it is in Ontario and Quebec now because of that particular definition. That definition is, I am sure, helpful. The government should not legislate morality. There are those who have a contrary view, that the government should legislate a particular morality, but they are a very clear minority today. They were a majority in the days of state religion but not so in modern times.

This Act recognizes a person's sexuality as an individual question and as a moral question, in large measure, and we must say that we are not legislating any particular morality. This is not involving any special rights for any individual or any group. The concern is to protect people from discrimination, not to incur any special rights.

In my travels around the Yukon in the last year or so, and in debating this measure publicly and privately, the most common area where people miss a distinction is in the concern about approval or disapproval of homosexuality or a homosexual lifestyle, and approval or disapproval of granting the basic human rights to people who may be of an opposing morality. There are, perhaps, a majority of people — I do not precisely know — who disapprove of homosexuality. Certainly, the majority of people are not homosexual, the majority of people are heterosexual, and that is clearly the fact. What many people miss is that this is interpreted in some way as an approval of the particular morality, and that is not the case at all.

<sup>04</sup> That is the opposite of the intention of the government. The intention is to not approve of any morality.

It may be said that there is an opinion on this issue against including this measure. I would argue two ways about that. One is that it is clearly a controversial issue. There was a petition filed today, and I would estimate that the most emotional issue identified in that petition was sexual orientation. That is certainly the way I understand it. It clearly would be my prediction that if the government withdrew this section, or if the amendment passes, there would be an outcry, and I would suggest equally as strong from those who would object to that. It is a controversial issue, and it is my clear estimation that Yukoners are fair-minded people who

may personally disapprove of a lifestyle or morality, but they are not opposed to granting basic civil or human rights to those people who do not share their morality.

Secondly, I wish to quote from a respected Member of this Assembly, the Member for Kluane. On January 28, at page 547 of *Hansard*, that Member was talking about his representation of his riding. The specific issue was the possible conflict of interest between the people of Haines Junction and the people of Destruction Bay.

<sup>05</sup> That Member said: "Yes, I live in Haines Junction. I am very proud to live in Haines Junction, and I am very proud of the people there. I also represent Kluane, and I have guts enough to back a few people if I irritate a big group." Now that Member was standing on principle that he was being fair to everyone in suggesting that everyone, even a minority interest in Destruction Bay, deserves adequate representation. We understand that position, and it is a position that Legislatures often find themselves in. Some things you do simply because they are right, and it is clear, in a democracy and in a pluralistic society, that there are difficult issues, and issues that you must face that some will approve of and some will disapprove of. Members must make up their mind according to their conscience as to what is appropriate. This issue is one of those. There are many others that are equally as emotionally ringing: abortion and capital punishment are two. This issue has a moral element as does abortion and capital punishment. I would submit that the principle here is to protect the basic human rights of every citizen, even if they are an unpopular group. It is our duty as upholders of the principles of freedom and what we think of as a free country to protect absolutely everyone.

<sup>06</sup> **Mr. Phelps:** I have a few things to say in support of my motion to delete sexual orientation from Section 6 in the Bill. When the Minister speaks about it not being the place of government to legislate morality or lifestyle, it is my contention that that is exactly what this government is attempting to do. The Minister states that, in his opinion, most Yukoners are fair-minded people who would be tolerant of peoples' lifestyle; I concur with him on that. It is that very tolerance that is being undermined by this Bill in general, and this subsection, as one of the cases in particular.

I want to talk about four main areas that are of concern to me. The first is that the need for this subsection, and indeed the Bill itself, has not been demonstrated by government.

The second will have to do with this Bill generally, and this subclause as one particular, has the effect of reducing the rights of many citizens in Yukon.

The third area has to do with the issue of certainty, which I will be raising again and again as we go through this Bill clause by clause. I will be touching on the issues that certainly cannot be said to be certain, given the experience of what is occurring in Ontario, since they passed a similar subsection.

Finally, I intend to say a few words about the harmful effects this whole exercise will have on those whom the government is supposedly protecting, although again there has been no real need demonstrated by this government. That in itself, given the kind of sanctimonious speeches we have been hearing, seems to indicate, to me anyway, that the government is attempting to legislate on the issue of morality in Yukon.

<sup>07</sup> Now, going to need — I guess there is nothing to say when there has been nothing shown or demonstrated. There really has been nothing brought forward that would convince me that there is a need for this Bill let alone this subsection. Certainly the experience with regard to the *Fair Practices Act*, once known as the Ordinance, has been that very few complaints have been pursued at all. I can say that I had some experience with regard to the Act itself back in the early 1970s working with the citizens' groups at that time to ensure that people were aware of the protection that was and still remains in effect under that Ordinance which, admittedly, can use some amending and some upgrading.

Secondly, to turn to the issue of the reduction of rights of others in Yukon — because this is a Bill that really does not speak to equality, it is quite the opposite, it is a Minorities Rights Act. I think some people are honest enough to say so and defend it on that basis, but when you push, particularly when there is no need, rights



of some, it can often have the effect of adversely affecting the rights of others.

This clause is a singular example that goes against the ethos, the morality of the vast majority of people in the Yukon. A lot of people cannot understand why sexual orientation, an issue pertaining to behaviour, is treated in the same way as other grounds that are entirely beyond the control of the individuals protected, race, colour, physical disability and so on.

A number of problems are going to be faced by the silent majority in Yukon in years to come because of this Bill. I think that one can look, for example, at a situation where a small family business, which after all is the majority of small business in Yukon, hires a person not knowing that person is of a different sexual orientation. Once the person is hired he is then confronted, possibly by a person who may flaunt his or her sexual orientation as the case may be. If that is a family business, what this Bill has done is place these people, who have built and who own their business, in a situation where they simply cannot get rid of that person.

Whether or not you agree with their standards and their morality, that family business and the individuals in it are condemned to spend most of their waking hours with a person they may find offensive. That simply does not seem fair to me. It simply does not go with all of the things we think of when a person has a right to go out and build a business and own property, that people should be saddled with this kind of situation simply because the government wants to legislate morality. The effect of that is to say, "You are wrong, you spend your life in that kind of situation".

We have a situation — and I was rather astonished, perhaps it was a perverse attempt at humour — when the Minister quoted from words spoken by the Member from Kluane. I know that Member very well and know he feels as strongly as I do about the potential for injustice, particularly in the small business, or family business, situation. There will be people who are radical, people who will flaunt their sexual orientation. Perhaps it is a very small minority — those whom this section is allegedly being put forward to protect. There are people who will be militant, as there are those people in Ontario.

There are people who will ensure that should a person not be hired who happens to be homosexual, that a complaint will be laid, and it will be virtually impossible in any situation for an employer, particularly a small employer, to prove — and he will be in the position of proving — that the reason for not hiring that person was perhaps some other valid reason.

One can think of situations, and the Member for Kluane spent a great deal of time in one industry in particular where such a reason may not be unreasonable, and that is the outfitting area in a wilderness setting, with a very small workforce for months on end.

And again, the same kind of situation can, and probably will, occur where someone is fired who happens to be homosexual. The person may not have been fired for that reason, but it is easy to claim that that is the case, and it is often very difficult to prove otherwise. If one is successful in defending one's self when one is falsely accused, there is usually at a great deal of expense and trauma to the employer, who surely has rights that ought not to be overlooked by any of us in the Legislature.

Then there is the concern that there may be school teachers who are homosexual. The thing you always hear is, "Yes, there undoubtedly are now, but it is not a problem." That it is true; there is no problem, at least to my knowledge in recent years. How about the situation, given the protection of this Bill, where this sexual orientation is flaunted at school? To what extent can that occur, and what kind of action is protected by this Bill, this subsection? I do not know the answer to that. I do not know how often that kind of thing may occur, but again, I am sure all of us with our life's experience know of people who will, the militant few, take that opportunity in order to push this to the limit. If that happens, what about the rights of parents? Surely their rights as parents are being reduced by this subsection. Reduced when there is absolutely no evidence of deed, reduced when the government states they are not attempting to legislate morality. There are those who fear that this is and will lead to a change in the general environment of Yukon society. They certainly feel that, at least to some extent, this

government putting this forward when there is no demonstrated need, again, is in a very sanctimonious way legislating its morality, imposing its will upon the individual.

Then we have the Minister saying that is not the case, that they are not legislating morality. I guess it is through whose eyes you see it, because I have a great deal of sympathy for the small family businessman who finds itself trapped, or the employer who is attacked for not hiring someone or firing someone, particularly when it may be proven later, at some expense to the businessperson, that the accusation was false and frivolous. We will get to that clause in this Bill; it does not have to be the so-called victim who sets those wheels in motion.

I recall part of the debate in early January, and an exchange between the Member for Kluane and the Minister. The point that the Member for Kluane was trying to make was the huge expense that a person sometimes has to go through to simply prove that they are right, prove that they are not dishonest, prove that the accusations made against their good name are unfounded and false.

It is always ironic to me that those who are absolutely without assets and without jobs are assisted in every way by government through legal aid, and whatnot, and yet the struggling businessman who has worked hard and never asked for a dime from government can be absolutely broken by the litigation that this kind of Bill is bound to engender. When a person from Kluane has to come in, explain himself, hire a lawyer and go see the Human Rights Commission, I think we all know that that is going to be traumatic, unsettling, often damaging to his or her reputation, hard on the family, hard on the pocketbook and will certainly leave a great deal of uncertainty in the lives of quite innocent, well-meaning people in the small town situation.

I spoke about mentioning the issue of certainty, one which I feel quite strongly about, and I really do not think many of us know — some of us may profess to know — how far the Human Rights Bill will go and to what extent business will be effected by the Bill. It is interesting that clause 36 of the Bill speaks to the issue of paramountcy and reads: "This Act supersedes every other Act, whether enacted before or after this Act, unless it is expressly declared by the other Act that it shall supersede this Act."

In general debate in Committee I read into the record the full extent of an article that went across on Canadian Press Wire Service, and it raised some of the issues that are coming forth in Ontario already and it spoke to groups that are putting together a fund to test this new clause in Ontario in order to see just how far it will go. They are going to be testing such laws as the issue of adoption by couples of the same sex and family health insurance coverage — they intend to run that one through — taxation benefits, club and society and church membership, pensions for surviving spouses, and the list goes on and on. There is absolutely no reason to expect that that kind of challenge, that kind of militant person does not exist in Yukon and, of course, if we pass the law leaving all of those issues open then we certainly invite that kind of action, those kinds of demands and, indeed, one cannot fault a person for testing laws that are passed by this Legislature. That is one of the rights that I think all of us, at least those on this side, would defend.

I do not think it is a laughing matter. I do not think, for example, that the issue of adoption of children by a homosexual couple is something to be sneered at as absolutely impossible. It certainly happened in some jurisdictions, perhaps not in Canada. These are all issues that are a concern to a great many Yukoners, and I just cannot understand why we are into this situation. I certainly realize it is wonderful to be trendy. I suppose it gives someone a glowing feeling inside to be sanctimonious and not legislate morality, but what is the effect of all this on tolerance levels on Yukoners. Is it going to have the effect of reducing in practice the employment chances of people who may, or may not be, gay. When people say to me, well, we are really going to restrict our business, we are really going to be careful, we are not going to hire many people, are they simply over-reacting, or is there a kernel of truth in it? Does the side opposite really believe that there was a huge tolerance problem prior to this Bill coming forward a year ago? Well, I think, and I firmly believe, that the tolerance level was good. But I also

know people feel afraid by this Bill. People feel that it is an attempt to legislate morality and lifestyle on them, that the so-called distinction mentioned by the Minister may be one he sees validity in, but they do not. And so, I really hope the Members will reflect. I am rather interested in whether each and every one of them supports this subsection, and I have absolutely no qualms in asking each and every member here to support this amendment.

**Hon. Mr. Penikett:** Let me at the outset say that I am somewhat disappointed in the speech made by the Leader of the Official Opposition on the subject, at least in part because he has not developed, expanded or even considered the contradictions that were inherent in the example that he made in the second reading speech many weeks ago, which he now repeated again tonight. Nor has he shown the slightest bit of concern for the minority — let us concede, an unpopular minority — who hope to be protected by this clause, but who clearly do suffer discrimination and prejudice in the community today.

<sup>12</sup> I would think the Member's speech alone is evidence of that.

Let us consider the example he gave of the small family business that found themselves uncomfortable in the presence of a gay employee. I believe when he used the example earlier, he suggested this family might be of a certain religious persuasion that perhaps found homosexuality offensive or immoral.

It is an interesting example, because I do not think any fair-minded person in Yukon today can make a reasonable case that employees have more rights in existing law than do employers.

You might argue in a case where there is a collective agreement, or where there is a unionized shop, that employees have won a fair number of rights, but nobody would argue in Canadian society today, or in Yukon society, that union rights have seriously eroded management or property rights in any substantial way.

The point is, the balance of power is very much on the employer's side. Whatever reason the employer gave for getting rid of an employee, it is extremely hard for an employee working for a small private business to seek any redress for dismissal whether the grounds were fair or not. There is, outside of a union situation, hardly any tribunal, hardly any court of appeal. It is interesting that in the example chosen by the Leader of the Opposition, he somehow suggested that the people with almost all the power in the situation, the employer, are the victim, whereas the gay employee is somehow the oppressor.

I would have to say that that is a perversion of the power realities, a perverted statement of the realities in that power relationship.

Let me make a second point. The Leader of the Official Opposition suggested the sexual orientation of the person is deeply offensive, and that an employer ought to be able to dismiss a person for that reason if it is deeply offensive. The Leader of the Official Opposition did not pursue the logical concomitant to that, which is that an employee wearing a turban, or with a different complexion, or of a different religion from that held by the employer, might be equally as offensive to the employer, but he did not suggest, and I would hope he would not, that it would be somehow logical and reasonable, therefore, because the employer found the employee's religion offensive, his race offensive, or — and this touches on the flaunting argument of orientation of gay people — finds the manner of dress of the employee offensive.

It is not so many years ago that employers found it perfectly appropriate to dismiss employees, for example, for the sin of having long hair. I do not doubt there are employers today who may, on reasonable grounds, dismiss employees because they are not dressing properly for work.

To somehow suggest that because the employer finds something about the individual offensive. Sexual orientation, the Leader of the Official Opposition argues that is perfectly all right, but logically then it ought to be just as logical to be able to dismiss them for their religion or their race. Note nothing is discussed about the employee's ability, their performance on the job, the satisfactory nature or otherwise of their work. What we are talking about is something about their behaviour.

<sup>13</sup> Because it is as offensive a notion to me that someone might be dismissed for wearing a turban or having the wrong religion, so too logically it is just as offensive to suggest that because of an

orientation, which may be biologically determined and not of a person's own choosing, that they should be or could be dismissed from a job. It is just as offensive and just as unjust.

I finally come to the third point that disturbs me about what the Leader of the Opposition says. He does not address it all except to suggest that this person may be a militant or aggressive or litigious what may be the rights of this person in this case. It is interesting that he finds this an acceptable grounds for dismissal, because it is not a question of even proving it. You could make a presumption, based on mannerisms or behaviour, that someone had this orientation, without having any other evidence and, presumably because flaunting is deemed by the Members Opposite to be a deeply offensive and socially destructive behaviour, they could be dismissed for that, something that I consider to be a grave injustice.

The Member opposite suggests that there is somehow no manifested problem in Yukon society. Because of the public attitudes expressed by the Members Opposite, it is not surprising that they have not had the opportunity, as a number of us have who express different attitudes, to hear from virtually dozens and dozens of gay people in the past few months who do not feel confident enough to go public and expose themselves as they would have done because the Members opposite believe as they do, that these people should be able to be fired from their jobs or lose accommodation because of an avowal of a homosexual lifestyle. They are not going to expose themselves to that, but, having spoken to us privately, have cited case after case after case of prejudice in their daily lives, prejudice which this Bill, quite properly, seeks to address.

It is suggested by the Leader of the Official Opposition that somehow we will have somehow militant gays taking disruptive and mischievous cases before the Human Rights Commission. If I were a gay person and if I were dismissed from a job in this society, given the current social attitudes, I think the least likely ground on which I would try to appeal my dismissal would be on the grounds of my sexual orientation. I think to do that would be to expose myself to a great deal of prejudice in this community, a great deal of it.

It was suggested that somehow the employer in this case would suffer in the tribunal, would suffer a great wrong, would suffer harassment, would suffer cost, and yet in the example he gave at the beginning he conceded immediately that the reason for the dismissal in the case he gave was because of the person's sexual orientation. Yet, somehow he concludes in the examples he gave that when the employer might be brought before the tribunal, having dismissed a gay person for being gay, that somehow the injustice is being done to the employer.

<sup>14</sup> I find his argument, as he is an officer of the court, a QC, quite surprising.

The suggestion about flaunting it, which seems to be the deepest fear we keep hearing from Members opposite, is troubling. The example of teachers was given, and no doubt there have been gay teachers in the school system as there are no doubt gay teachers in the school systems everywhere in the country. This notion of flaunting it, I do not know whether it starts with the idea that someone may be a self-confessed gay person, or there may be some peculiar notions attained from American television, or some other source, as to how gay people behave, that they somehow behave in some different manner. I suspect that it is just as proper for a person who happens to have an orientation to express their views on that subject, if invited to, as a person who may have a religious view or a cultural view or some other point of view. They may just affirm their personality.

As a purely practical matter, I think that those of us who think rather carefully will know that most of the gay people we know within this community are in terms of their dress, their department, the conduct of their business, their activities at work indistinguishable from other members of the community. What distinguishes them is the sexual orientation, and that may be expressed in their private lives in private, not in public.

I think that if you spend even a few minutes in any drinking establishment in this territory, hearing from ordinary citizens on this subject and hearing some of the sick jokes, and hearing some of the prejudicial terms, and hearing some of the insults, you cannot

for a moment suggest with a straight face that there are no prejudicial attitudes towards gay people in this community. You cannot do that with any kind of honesty, with any kind of sincerity. I understand that it is a statistically-supported fact, that in this society, as in almost every society in the western world, and perhaps human society since it was born, that about 10 percent of the population happens to be gay. I suspect that most of those people did not choose that orientation. I suspect that even in this relatively liberal, relatively tolerant society, that many of these people — perhaps most of them — lead difficult, painful, isolated lives. I suspect that they experience daily prejudice with respect to their employment prospects, their promotion prospects, their living arrangements, and their possibilities for social relationships. I suspect that many of the people who are gay in Yukon are closeted, are frightened, and even threatened with respect to their economic security. I believe that most of them do not choose this condition; it is something they discover about themselves as they reach maturity.

We are not asking the Legislature to bless their lives, to sanction their private lives, to condone what some people may regard as immoral behaviour on the grounds of deep conviction, religious grounds. We are asking this Legislature to do something that ought to be perfectly acceptable in the second half of the twentieth century: to say that such people in this community should not be discriminated against when it comes to employment, when it comes to accommodation, when it comes to service in a restaurant, or when it comes to their basic civil rights.

It is a very modest proposition, and it is a modest proposition as in this Bill it refers only to rights that ought to be and can be enjoyed by adults who have a particular sexual orientation.

I do not believe that the amendment suggested by the Leader of the Official Opposition has anything to recommend it. It may even be a popular proposition, but let me argue that it is not a just one. The publicity around such cases in Ontario, as he suggested, in Toronto, I do not believe is going to be a widespread phenomenon here. I think it is likely that it will be of no consequence at all. I think we should deal with the situation of real people in this community, here and now, many of them born here, raised here, who did not choose the circumstances in which they find themselves, but who may be suffering because of it. I think they are as entitled to protection in law as anybody else. They are entitled to the same civil rights as anyone else.

**Mr. Phelps:** Well the Government Leader's speech deserves a short reply. I think he has done an admirable job of trying to twist my arguments around. I think that basically the disagreements are reasonably fundamental. I suppose one problem we do have is that we hear the Government Leader talk about "suspecting", "believing" and "may be" and the problem with those kinds of words is that they underly the factual situation, namely that the Government Leader and the government really does not know what the facts and the need has not been demonstrated in any objective manner for this cause, and hence the need for such emotive words.

The Government Leader's argument was very interesting about the balance of power always on the employer's side. I do not think that is always true; it certainly has not been true in the situation of some companies in Yukon. There are those who believe that, after all, the employees were more responsible than anything for the demise of the Cyprus Anvil Mine, and there is certainly that speculation that that may occur again if the Government Leader's friends do manage to unionize the company. It certainly has been factual that many of the White Pass Railway problems emanated from an imbalance of power the other way around on the American side of the border regarding the huge costs of the feather-bedding, the wage differential, and so on. In a family business, surely the employer has certain rights related to lifestyle, and I suppose the balance that is not to be found between this side and that is whether any compassion or concern ought to be felt for the employer, for the person who may be victimized by this Bill.

<sup>16</sup> The strong feelings that all of us on this side have about the under-the-watchful-eye of Government, the inspectors, the Human Rights Commission, or any other kind of Government discipline. Those feelings are, I suppose what really separate us from the NDP government, because they are sincerely held concerns. I, for one,

feel very strongly that many individuals in the Yukon have suffered from government red tape. Certainly I have had many, many people come to me with problems over the years, and certainly that concern is felt very deeply by myself and all of us over here.

The Government Leader professes to feel strongly about this subsection that is being debated. I would gather from his comments that he is not about to be swayed. I really wonder how the statement could be made that this is not in some way legislating morality. I will stand here and say that I fully support this motion, and I would hope that some on the other side might as well.

**Mr. Brewster :** First I would like to correct the record. The Minister of Justice is starting to become a press man where he just takes the quotes of a man's speech. He just uses the ones that help him, but does not bother with the rest. I suggest that if he wanted to be fair, he would have quoted what the Government Leader said, which caused me to make that statement. We were not talking about morality; we were talking about fairness, and there is quite a difference. However, the Minister of Justice is getting quite handy, I guess he has learned from CBC, just quote what you want and never mind the rest.

I am going to go back a little bit. In 1960, I was the Chairman of the school advisory committee. We went into two instances that we talked about right here today. Three of us stood between the community and a teacher. It was not a very pleasant situation, and I hope to God I never have to go through another. In the first case, we managed to calm things down in the small community. The teacher lasted for about another month and the pressure made him leave. I personally felt very badly in that case because I thought he was a fine gentleman.

The next case that came along was an absolute disgrace. Any place or any time, there is no question there was something very wrong with the people concerned. We again sat on the Committee, but there was an uproar in the community. We had the union telling us that we could not get rid of him. The people were demanding that we get rid of him, and we had to make a choice of whose rights were right — the people and the parents, or the teacher or possibly the children. Let us think about the children. I am not going to get into this sore episode; it is not too pleasant, and I do not like it. I am going to tell you that some of you are living in a dream world when you say that these things are not going on because they are going on. A lot of you do not want to face the facts that they are there. The people in small communities have to have a right to live. When people come in this way, then there are problems, and there should not be.

<sup>17</sup> The Government Leader states that all the power is on the employer's side. I guess I am on the wrong side of the fence, because I have been dragged up three or four times with employees, and I have lost every case so either I had a damn poor lawyer, or I should sit on the other side of the fence, I am not sure.

One thing they are going to have to find out, and again I think the Government Leader is living in a dream world, is that when you have staff and a business, your staff must reflect you and what you are like. You must build your staff around you so they have pride in you. If you do not have a choice of who you hire or do not hire — and I am not going to bring up what I did before because the CBC may be there and they misquoted me the last time, and I do not want them to do it again because it causes problems — and if you want a staff you have to be able to pick your staff, whether they are fully qualified or not, if they fit into your situation, you use them.

For instance, as I understand this Bill, I continually hired women every place, on my gas pumps, in my restaurant, in my bar, out horse wrangling and everything. There were lots of men better qualified, but they could not fit into the situation so I did not hire them. According to this thing, I guess I could be charged for it.

Another thing people are forgetting here is that tourism is one of our big industries. These are American people, and if we start allowing these types of people to be working in these businesses, we will be losing a lot of this business, and we will be losing it very, very fast.

In closing, I can recall the former Sergeant-at-Arms, who was our Inspector for Health, our Inspector for Building, our Inspector for Compensation and our Inspector for Licenses. We have now

Department of Revenue Inspectors, we have Bureau of Statistics, we have Compensation Inspectors, we have Building Inspectors, we have Health Inspectors, and it goes on and on. Now, we are bringing in another set of inspectors who are going to tell us who we can hire and who we cannot. I have lived a long time, and I think I have been very fair to people. I am ashamed to have to sit in this House and see legislation like this pass.

**Chairman:** Is it the wish of the Committee to continue or to take a brief recess?

We will recess for 15 minutes.

#### Recess

**Chairman:** Committee of the Whole will now come to order. We will continue debate on the amendment to 6(g).

**Hon. Mr. Kimmerly:** I am not sure what incident Mr. Brewster was talking about, but the Bill here does not apply in any way to sexual activity and it does not apply to children, in any event. There was a statement made about employers and the choice of employees, and of course it is always the case that employers are always able to choose the most qualified individuals and the employers will determine the qualifications for the job. The presentation to the public is a factor in jobs where there is a public presence.

Much was made about the phrase "flaunting it". I am moved to say that at some point flaunting it becomes sexual activity in itself, and if that occurs it is not covered by this Bill, but more importantly than that, flaunting it is a colourful phrase and it suggests projecting one's sexuality. It is most commonly done by heterosexuals, most commonly done by males and it is interpreted in some cases as harassment by females. That is much, much more common. There are community standards that must be adhered to. This Bill is not any threat to anything like that.

Also, the comment was made about the position of some people testing the limits of the law, talking about gay marriages and gay adoptions and the like. This has been the law in the Province of Quebec for ten years now and that has not occurred. In a city like Montreal I would expect that that is the place where it would be likely to occur, if it occurs at all.

It does not occur because there are adequate protections. In Ontario the position was debated and the Ontario Bill does not apply to things like the definition of a spouse in the *Marriage Act* and to the *Adoptions Act*. That is the case here as well, and when we get to clause 8 it is clearly stated where the Bill applies and where it does not apply so there is no concern. I would just suggest that that is a kind of scare-mongering, in essence. That is a rebuttal of some of the points raised so far.

**Mrs. Firth:** I think that we, as Members, have a responsibility to stand up and put our positions forward on behalf of our constituents. I would like to hear what some of the other Members on the government's side, in the backbenches, particularly, feel about this issue. I hope we are not going to sit through these debates and hear simply from the Government Leader and the Minister of Justice, because there are Members sitting in those seats who represent constituents and the constituents want to hear the thoughts out of their mouths, not out of the mouths of the Government Leader and the Minister of Justice. I would like to know where the Member for the Campbell riding stands on this issue. I would like him to get up and tell us in this Legislature. He represents the people in that constituency; there were some views expressed by those constituents, and I think we all, as Members, have a responsibility to stand up and say what our position is, and I would like to hear that position.

**Mr. Lang:** I think the Member for Riverdale South has asked a very pointed question, and I think it deserves an answer. Somebody thinks they are going to draw a paycheque in here and not open their mouth for four years other than to say sit down. I think, in respect to this House and in respect to the authority each Member has to vote for any given section for any given appropriation, for any principle, they have a responsibility to voice their position in this house. Not necessarily from a partisan point of view, but from

a point of view of the constituency they represent.

**Mr. Phillips:** We are not having very good luck with the Member for Campbell. In the last year or two, I have made about four trips to Watson Lake. I discussed many times with the people of Watson Lake the concerns in this Human Rights Bill, and they have expressed to me their concerns over issues. One of the most outstanding issues that we heard is the issue of sexual orientation. I would like to challenge the Member for Watson Lake to stand up today and clearly state his position. Many people in that community are asking what the position was for that Member, and I told them I do not know because he has not told anyone. I challenge him to stand up today and take a stand on this very important issue so his constituents know where he is coming from.

**Mr. Porter:** The Member for Riverdale South, or any other Member of this Legislature will not dictate to me when I speak, or when I do not speak.

**Mr. McLachlan:** I would like to speak on my feeling on the Bill. I referred before in this Legislature that I think those of us who represent rural ridings perhaps have a slightly different feeling or impression on this controversial clause. Mr. Brewster has referred to it earlier. I would not say the feeling is different, but I would say it is not quite as pronounced in the rural ridings. Those people who choose this type of life, I feel, whom I met at the meetings in the community of Faro, simply are in the position where they do not make it as known as we might experience from others living in the capital city of Whitehorse. It is not a particular type of lifestyle that I would go on record as recommending to anyone. It is not a type of lifestyle, for example, that I would want for anyone close to me. Having said that, I want to make it perfectly clear that my liberal feelings and upbringing make it clear to me that because I choose not to pursue such a lifestyle does not necessarily make it wrong for someone else to, nor does it make it right for me to discriminate, uphold, remonstrate or demonstrate for those persons who do chose that type of lifestyle. I recognize that there are people out there who perhaps have felt at many times that they do not have any protection, wanted some, and that, as the Government Leader referred to, felt they had none at the moment — in much the same way, at one time, if one were a Negro, or Jewish, or were an Indian, he had none.

I would also like to say that I believe that, at times, the debate on this particular subject in this particular Legislature should have long ago risen above the point where we talked about three types of washrooms in public buildings marked "his", "hers" and "homos". I think that perhaps has demeaned the style of debate in the Legislature. I believe that in matters of private morality if one's beliefs or actions do not infringe upon other people, or deprive them of the any rights, then the government does not have the right to interfere in those private actions. In fact, I would see the role of government as one of protection.

Because of my feelings on this particular issue for those people who have chosen this type of orientation, I will be recommending a vote for this particular clause staying in the Bill, consequently voting against the amendment.

**Hon. Mr. McDonald:** Certainly, in response to some of the challenges put forward by the Members from across the floor, I would like to say that our Caucus has reviewed the matter at some length and we speak as a Caucus when we speak. I would like to state once again some of the concerns that I expressed in my second reading speech, and perhaps become a little more specific about the issue of gay rights, the issue of the amendment and arguments that have been put forward by the Member for Hootalinqua, the Leader of the Official Opposition, as well as the Government Leader and the Minister of Justice.

I found the discussion to be quite fascinating. I have blended some of the thoughts I had originally taken with respect to this matter in second reading, and some of the arguments that were put forward by Members this evening. I can say, as I have said numerous times to constituents whom I represent in many ways, that I too share the sentiments of the Member for Faro. I will just explain why.

In the last couple of months I have spent a good deal of time going around my riding talking to people who essentially do not

share the lifestyle, as it is termed, of gay people.

<sup>22</sup> In fact there are many people in my riding who have very little in common with that particular lifestyle and it has been my perception, at least, that they essentially have misgivings about something they do not understand or do not feel comfortable with on a personal level. That is not the issue here; the issue is how government responds to some concerns by a minority of people in our community. In my view, it is incumbent upon legislators, all of us here, to show tolerance not only to those people who are our friends, not only tolerance for people who are our acquaintances, for whose lifestyles we feel comfortable with, but for all people.

For my part, I remind myself, even in those times when I feel somewhat uncomfortable on a personal level with some of the lifestyles that people evoke, that ultimately these people are, in fact, people, and what they do in private is their business and none of mine. I think it is wrong for us, as leaders in this community, to allow our community to punish in any way people who engage in activity on a private level with other consenting adults.

I am very aware, living in a small community in this territory, of what it is like to be subjected to community pressures. Community pressures in that environment are much more severe in many respects than they are in the larger urban setting. You cannot escape your neighbours; your neighbours are there. You deal with your neighbours, you live with your neighbours, you cannot escape, even if you want to. There are pressures that are brought to bear and those pressures are overwhelming at times and it is absolutely necessary for people in those communities — people in our community — to recognize that to bring those pressures on people, to use group pressure to, essentially, ostracize groups of people for, in this case, their sexual preference, to, in some way, state that in and of itself this activity is not only wrong but cannot be tolerated as an edict of the morality of the majority I think is something that condemns these people to a life of pure hell.

I, as one legislator, will not participate or support any actions that condone that kind of behaviour or activity, the behaviour of legislators who feel that they should legislate morality in the manner in which the Leader of the Official Opposition puts it.

The way in which the Member for Faro has put it is a way which I particularly share. For that reason I personally support the inclusion of this clause in the Bill. I have spoken, I think, to every single person who has been at both meetings in Mayo, the public one and the one I was in attendance at with the Minister for Justice, and it has been very explicitly stated that I regard Christian tolerance as I evoked it in the past in this Legislature. For me, Christian tolerance is not a matter of convenience, it is a matter of basic fundamental morality and is something I will continue to support in this Legislature, time after time. I would hope that people of like Christian tolerance will vote along with me.

**Hon. Mrs. Joe:** I have already stood in this House and let people know what my feelings are. I believe that this section of the Bill should be left as it is.

I would like to talk about an incident that happened to me at my home. The petition against Human Rights was all over the Yukon over Christmas, and I had a chance to hear what they had to say with regard to why they were getting people to sign it. I did not speak to the gentleman myself; my daughter answered the door, and I listened because I was curious to find out exactly what they were telling the people of the Yukon. I was really, really disappointed. I could not believe the things they were telling people about the *Human Rights Act*. I could not believe how misinformed they were, or that person was, who came to my door, and the kind of things they were telling people, and the kind of fears they should have. I listened for about ten minutes while the gentleman talked to my daughter at the door.

<sup>23</sup> He was disgusted when he left that she, of course, would not sign it.

I want to speak of some of the differences between what I believe in and people on this side of the House believe in. It is a story and I want to tell it. It is about one of my daughters who grew up with a girl here in Whitehorse; probably a girl who many of us know. She went to school with her and they were great pals for a number of years. A few years after they left school, over a beer, they were just

joking around and having lots of fun and this girl informed my daughter that she was gay.

My daughter came home and told me about it. I asked her what she said. She told me there was no difference to her because she was her friend. I was really proud of my daughter. I was glad I was able to instil upon her that we are all equal no matter what we do and no matter how we think. That daughter now has a daughter of her own, and I know what kind of a granddaughter I will have. I know she will be able to have the same kind of understanding of other people as my daughter has.

I have no problem standing up and supporting the protection for those individuals who are different than we are, and I am proud to do it.

**Mr. Lang:** The concern I have, and I will direct it to the Member for Teslin, is that I am told that the Member for Teslin has said he really does not support this type of principle in a piece of legislation. You cannot have it both ways. You either support the principle or you do not, and if you do not, you vote against it. It is very basic.

I respect the view of the Member for Whitehorse North Centre that she will stand here and give her position, and I will stand and give mine. I object to somebody using silence as a method of putting forward their position. That is shirking one's responsibilities as an MLA.

<sup>24</sup> That is what my concern is.

**Mr. Johnston:** I would like to speak to the other side, as they challenged me to stand my ground. As an elected Member, I would like to say that the thing we are speaking about has been around as the world is old. Just because we are elected into a position as we are, it does not make us God so that we can discriminate where we should not. These kinds of people we are talking about here are around in all walks of life, and it is not up to us to discriminate against these people. They are in every walk of life, and we, as a little group here are not going to clean this up. They have rights, as long as they do not hurt society.

I am sure we do not know how many of these kinds of people are here in the Yukon. Sure, a lot of them are maybe teaching our children, yet they do have rights as any individual does. They are still human beings, so I cannot see where we should just eliminate them. They have rights like everybody else. This is all I have to say.

*Applause*

**Mr. Lang:** I am pleased to see the Member from Campbell standing up and taking a position. I do not have any problems with that.

There are a couple of points that have been forgotten in the course of the debate. First of all, I want to direct Members' attention to the fact that when you provide rights for one group of individuals, or one individual or organization, you are then indirectly, or, in some cases, directly taking those rights from other people.

<sup>25</sup> People should be aware of what we are doing here. In bringing forward a section of this kind, you are indirectly making a law that gives a group or an individual more rights than others.

Now, I want to demonstrate it from this point of view. Let us take the young guy who has a family; he has three kids. He has four years of university in biology; he graduated *cum laude* and there is a job vacancy available in the YTG; he applies. At the same time, there is another individual with the same education, four years, graduated from the same class same credentials graduated *cum laude*, but, in this particular case, he happens to be homosexual. The young lad with the children and the family, if he is turned down for employment, what rights does he have? His rights are very clear; he has the right to go out and look for another job. He has no recourse, no grounds for discrimination other than the fact that he happens to be normal in the "definition of normalcy" in the world as we know it. If the individual who is homosexual is turned down, under these particular grounds in the Act, he will have rights to appeal that decision on the grounds that he has been discriminated against.

What I am pointing out is that there is a reverse onus or reverse repercussions with respect to any particular section within the Act. The Minister of Justice shakes his head; the Minister of Justice,

who we are all so proud of in the Yukon, who has done so well in promoting tolerance to the people of the Yukon, shakes his head. He is so self-satisfied and so arrogant in the corner, knowing that finally, with his Cheshire smile, he has finally gotten his way.

That is the tolerance we are talking about. That is the definition of tolerance. The man who believes that one should have the right to political opinion and political belief without fear of repercussion. That is the man who went to Watson Lake and had a public meeting, and because people opposed certain sections in the Bill, he came back and accused them of all being Conservatives. That is the man who believes you should express your opinion publicly without fear of repercussion or retaliation by government. The Minister sits there so self-satisfied and so smug. He should be smug, and he should be self-satisfied.

I agree; he has every right to be as smug and as arrogant as his little government wants to be because they know they are going to push this through despite the fact that we had a year-and-a-half of \$100,000 to \$200,000 worth of taxpayers' money go through with a propaganda program, with a so-called consultation program where the government said, "We are here to listen to the views of the people of the territory." We got the Bill we have before us.

What has fundamentally changed in the Bill? Analyze it. It is a better method of drafting. Nobody is going to argue that. What about the fundamental principles? What has changed within the Bill from what was presented a year-and-a-half ago? Virtually nothing. He is going to tell the media that they listened. He is going to tell the public that they listened, that they were prepared to listen to them, but he forgot to tell them that he was going to do exactly what he wanted in the first place. The key was to make it publicly acceptable.

We effectively went on a brainwashing campaign...

**Chairman:** Order, please. Would the Member restrict his remarks just to the item at hand?

**Mr. Lang:** I am referring to a specific issue that is before us today called sexual orientation.

**Chairman:** Please continue.

**Mr. Lang:** Thank you. I appreciate that. We have not stifled public debate — at least to my knowledge. Mind you, we have just started with a majority government, and, given a little bit of time, I guess that will come about, too.

My point is, this was the issue that sparked the most controversy throughout the territory. The Minister of Justice, in his remarks earlier, stated that for the record as well. This was one of the issues that caused the controversy of a Bill that should emanate good feelings out of this Legislature. But no, the Minister and the government were not prepared to listen. They were prepared to go through the mock process, but for the purposes, as the Leader of the Official Opposition refers to, of being trendy, we have got to catch up to Quebec, and we have got to catch up to Ontario, so we get a section like this in the Bill.

I really question the advisability of it, and the reasoning behind bringing forward a section of this kind in view of the Yukon as we know it. They know it is unpopular; they would like to push it through in five minutes here. There is no question about that. As soon as the Government Leader sat down and there was a little bit of a silence, he wanted question. He wanted to get on to the next issue.

It is an issue out there, it is an issue to a lot of people, and I want to go to an area of concern that I have: it is an area of family value. The Minister says that he he does not necessarily agree morally with what is going on with respect to homosexuality, but that it is not his position to comment one way or the other. That, in my view, is total and absolute hypocrisy because what we are doing is legitimizing further in law that kind of behaviour, that kind of conduct. Obviously, the side opposite agrees with it, otherwise the section would not be there. To try and ride on both sides of the issue under the guise, as the Government Leader says, of fairness and tolerance and justice is total and absolute poppycock.

The reality of the situation is what we telling our young people that kind of behaviour is socially acceptable to the majority of the people of the territory and we are going to legitimize it. That is exactly what it says. I, for one, and as a representative, do not

believe it should be done.

I do not believe anybody in this House got the mandate from a riding or as a government to put this kind of legislation into effect as we read it in the Bill before us.

Now the Minister of Justice says to this House that he believes if he withdrew it that he would get an overwhelming response to include it in the legislation, but I challenge him. Let us do the converse; let us take it out and let us see. Let us see if you get that response, because I submit to the Members that you will not get that response. You might get your 50 form letters, which you so happily and gaily tabled in the House here in December promoting the purposes of the principle of the Bill. I say there is a silent majority who do not agree, nor do they condone this kind of legislation.

With respect to the people we represent, there is a broader issue here than strictly this section and the ramifications thereof. The reality of the situation is, when we talk about homosexuality, that we are talking about anal sex. The reality of the situation is that there is a major medical disease for which there is no cure. It is called AIDS.

The Member for Old Crow laughs. The reality of the situation is that it is so rampant in becoming part of our society that the government saw fit to include it under the Chronic Care List. Obviously, it was a concern, enough of a concern for the government to take some action, yet they never mentioned it once in the course of this debate. We know that that particular disease — and the ultimate end of that disease, which is death — is upon us in today's society; yet, here we are in this House, further legitimizing that type of conduct, that type of sexual behaviour. You cannot say that you are not; you are. Everybody dances around it, but that is the reality of this section.

**Chairman:** Order, please. The time being 9:30, do you wish the Chair to rise and report progress on Bill No. 99?

**Some Members:** Agreed.

*Speaker resumes the Chair*

**Speaker:** I will now call the House to order. May we have a report from the Chairman of Committee of the Whole?

**Mr. Webster:** The Committee of the Whole has considered Bill No. 99, *Human Rights Act*, and directed me to report progress on same.

**Speaker:** You have heard the report of the Chairman of Committee of the Whole. Are you agreed?

**Some Members:** Agreed.

**Speaker:** I declare that the report has carried.

May I have your further pleasure?

**Hon. Mr. Porter:** I move that the House do now adjourn.

**Speaker:** It has been moved by the hon. Government House Leader that the House do now adjourn.

*Motion agreed to*

**Speaker:** This House now stands adjourned until 1:30 p.m. tomorrow.

*The House adjourned at 9:32 p.m.*

**The following Sessional Paper was tabled February 9, 1987:**

87-3-105

Information package re Northern Canada Power Commission Transfer Agreement reached between Federal and Yukon Governments (Penikett)

**The following Document was filed February 9, 1987:**

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A petition regarding certain principles contained in Bill No. 99 (Lang)